S. Hrg. 100-352

TEMPORARY SAFE HAVEN FOR SALVADORANS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE AFFAIRS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 332

A BILL TO PROVIDE FOR A GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT ON CONDITIONS OF DISPLACED SALVADORANS, TO PROVIDE CERTAIN RULES OF THE HOUSE OF REPRESENTATIVES AND OF THE SENATE WITH RESPECT TO REVIEW OF THE REPORT, TO PROVIDE FOR THE TEMPORARY STAY OF DETENTION AND DEPORTATION OF CERTAIN SALVADORANS, AND FOR OTHER PURPOSES

JUNE 18, 1987

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TEMPORARY SAFE HAVEN FOR SALVADORANS—S. 332

THURSDAY, JUNE 18, 1987

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Also present: Senators Simpson and DeConcini.

Staff present: Jerry Tinker, staff director; Michael Myers, counsel; Melinda Nielsen, chief clerk; Richard Day, minority staff director; Carl Hampe, minority counsel; John Trasvina, counsel for Senator Simon; and Ed Baxter, counsel for Senator DeConcini.

SENATOR KENNEDY'S OPENING STATEMENT

Senator KENNEDY. We will come to order.

Today's hearing will update the record regarding the question of granting temporary safe haven to Salvadorans, as proposed in Senator DeConcini's bill, S. 332, and as sponsored in the House by my Massachusetts colleague, Congressman Joe Moakley, in H.R. 618. As a cosponsor, I have an amendment pending in the Judiciary Committee to add Nicaraguans to the Senate bill, corresponding to the House provision, and we will welcome information on their plight as well.

It is regrettable that Congress is obligated to act on this question at all. Successive administrations over the past quarter century—both Democrats and Republicans—have used common sense and existing legal authority to grant temporary safe haven to 16 different national groups facing violence in their homelands. The conflicts in El Salvador and Nicaragua call for this same common sense—if not by the Administration, then by the Congress.

The reduction in recent years in death squad activity and other human rights violations in El Salvador deserves to be commended and encouraged. But unfortunately, widespread and indiscriminate violence still exists in that country. Salvadoran Catholic Church sources report 1,000 civilian deaths in the conflict last year alone, and many civilian casualties obviously went unreported.

GAO FINDINGS

The General Accounting Office report on the services in El Salvador offered by the Intergovernmental Committee for Migration is excellent, but it raises more questions than it answers. It finds, for example, that 271 Salvadorans deported from the United States later experienced threats and personal security problems—a fact not reported either by the State Department or the Intergovernmental Committee for Migration. The question is, what other personal security problems are not being revealed to the Congress?

The GAO also found that the ICM program encompassed only 69 percent of all the returnees. What happened to the other 31 percent, over 4,000 Salvadoran returnees?

Finally, every reason to protect Salvadorans is also applicable to Nicaraguans, and senior officials in the Department of State have recognized this parallel. Serious conflicts are taking place in both countries; innocent civilians are paying the price, and our legislation must deal with their plight.

I look forward to the testimony today, and I intend to do all I can to see that the legislation is adopted quickly by the Senate.

At this time, Senator Simon's statement will be inserted into the record along with a copy of S. 332.

[The statement of Senator Simon and the text of S. 332 follow:]

PREPARED STATEMENT OF SENATOR PAUL SIMON

Mr. Chairman, let me take just a moment to offer my support for this bill regarding the conditions of displaced Salvadorans which our colleague from Arizona Senator DeConcini has introduced. As you know, I am a co-sponsor of this legislation and it is similar to the bill that was before this committee last year. So I will not take up too much of the committee's time in addressing this issue.

However, I think it is fundamentally important that we take a look at the situation of the families who come to our country fleeing from the civil wars in Central America. Mr. Chairman, the country of El Salvador is about the size of your home state of Massachusetts. In the last seven years since 1980, there have been reported over 60,000 war-related deaths in El Salvador with thousands of survivors coming not only to the United States but other countries in between. The testimony and record of this hearing will provide this committee an update on recent conditions and the situation for returnees.

It is very appropriate that we, through the General Accounting Office, examine the conditions of these nations and try to get a sense of what happens to those we have returned. A similar war-torn tragedy can be told about Nicaragua and I am pleased to support Senator Kennedy's amendments to broaden the protection and relief this bill affords to those who have fled from Nicaragua.

Many have expressed fear of further persecution upon their return. Documenting the situation will provide us the knowledge and guidance for appropriate legislation in the future. In the meantime, it is appropriate and humane to temporarily stay the deportation of Salvadorans and Nicaraguans who have been in the United States from the date this legislation is enacted into law.

Thank you, Mr. Chairman.

II

100TH CONGRESS
1ST SESSION

S. 332

To provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 1987

Mr. DECONCINI (for himself, Mr. LEVIN, Mr. RIEGLE, Mr. DODD, Mr. BRADLEY, Mr. MELCHER, Mr. HATFIELD, Mr. SPECTER, Mr. SIMON, Mr. LEAHY, Mr. INOUYE, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT

INVESTIGATION

SEC. 101. (a) REQUIRING GAO INVESTIGATION ON DISPLACED SALVADORANS.—Within sixty days after the date of the enactment of this Act, the Comptroller General shall begin an investigation concerning displaced nationals of El Salvador.

(b) DETERMINATIONS ON DISPLACED SALVADORANS IN CENTRAL AMERICA.—The investigation shall determine the following with respect to displaced Salvadorans who are present in either El Salvador, Honduras, Guatamala, or Mexico, regardless of whether or not they are registered:

(1) The number of these displaced persons and their current locations.

(2) Their place of origin in El Salvador and the period of, and reason for, their displacement.

(3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food and medical assistance.

(4) An assessment of (A) current efforts to provide food, medical assistance, housing, and other necessities and to secure personal safety for these persons, and (B) policies and procedures that reasonably could be imple-

mented to assure more efficient and equitable distribution of this assistance.

(5) The impact of the war in El Salvador and of activities of officers of the Government or political parties in El Salvador on the matters described in the previous paragraphs.

(c) DETERMINATIONS ON SALVADORANS RETURNED TO EL SALVADOR FROM THE UNITED STATES.—In the case of nationals of El Salvador who have been required (whether through deportation, voluntary departure proceeding, or otherwise) to depart from the United States and who return to El Salvador, the investigation shall assess—

(1) their condition and circumstances in El Salvador upon return from the United States, with particular attention to any violations of fundamental human rights that have occurred upon their return to El Salvador, and

(2) the extent to which these persons, upon their return, have become displaced persons within El Salvador.

(d) DETERMINATIONS ON SALVADORANS IN THE UNITED STATES IN AN UNLAWFUL STATUS.—In the case of nationals of El Salvador who are present in the United States in an unlawful status, the investigation shall—

(1) compare the situation in El Salvador with the situation in other countries during periods when nationals of those countries have been provided administrative grants of extended voluntary departure under the immigration laws,

(2) describe the policies and procedures of the United States respecting the treatment of aliens (other than Salvadorans) in the United States in similar circumstances, and

(3) describe the policies of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

REPORT

Sec. 102. The Comptroller General shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than one year after the date of the initiation of the study under section 101, a report on that study including detailed findings on the items described in subsections (b), (c), and (d) of that section.

TITLE II—CONGRESSIONAL REVIEW

REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT

Sec. 201. (a) Referral.—The report, when submitted under section 102, shall be referred, in accordance with the rules of each House, to the standing committee or committees of each House of Congress having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) COMMITTEE HEARINGS.—No later than ninety days of continuous session of Congress after the date of the referral of the report to a committee, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

(1) the findings of the report,

(2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Salvadorans who are displaced within El Salvador or who have fled to other countries in Central America,

(3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances, and

(4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) COMMITTEE REPORT.—No later than two hundred and seventy days of continuous session of the Congress after the date of the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) Treatment of Continuity of Session.—For purposes of this Act, continuity of session of Congress is broken only by an adjournment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than ten days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY STAY OF DEPORTATION

LIMITATION ON DETENTION AND DEPORTATION

Sec. 301. (a) Limitation.—(1) Except as provided in paragraph (2), the Attorney General shall not detain or deport (to El Salvador) aliens described in subsection (b) during the period beginning on the date of enactment of this Act and ending two hundred and seventy days of continuous session of Congress after the date of transmittal of the report of the Comptroller General to the Speaker of the House of Representatives under section 102.

(2) Paragraph (1) shall not be construed to prohibit the brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(1)) for the purpose of determining whether this section applies to particular aliens.

(b) SALVADORANS COVERED BY THE LIMITATION.—The nationals referred to in subsection (a)(1) are aliens who—

"(1) are nationals of El Salvador,

"(2) are continuously present in the United States since the date of the enactment of this Act, and

"(3) are determined to be deportable only under—

(A) paragraph (1) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), but only as such paragraph relates to a ground for exclusion described in paragraph (14), (15), (20), (21), (25), or (32) of section 212(a) of such Act (8 U.S.C. 1182(a)), or

(B) under paragraph (2), (9), or (10) of section 241(a) of such Act (8 U.S.C. 1254(a)).

PERIOD OF STAY OF DEPORTATION NOT COUNTED TOWARDS OBTAINING SUSPENSION OF DEPORTATION BENEFIT

SEC. 302. With respect to an alien whose deportation is temporarily stayed under section 301 during a period, the period of the stay shall not be counted as a period of physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)).

Senator KENNEDY. At this time we welcome the Commissioner of the Immigration Service, and we are grateful for his presence here this morning. I believe this is your third appearance before us already this year with additional appearances, I am sure, in the offing. It is a good thing we extended you a multiple entry visa to this Committee, Mr. Nelson.

Commissioner Nelson will be followed by William Walker, who is Deputy Assistant Secretary of State for Central America. We welcome both of you.

We have got a full morning ahead of us, so we will move quickly to the testimony and will have everyone's statements in their entirety made a part of the record

I want to say for the State Department, Mr. Walker, we hope you will summarize yours since it is the identical testimony that was given to the House Committee over a month ago. We are glad that you accommodate the Committee with testimony, but we like to at least have our bills referenced rather than just the comments to the House bill.

Mr. WALKER. I have my own testimony, Senator. I think we are submitting that because that is a clear version.

Senator KENNEDY. Where is that testimony?

Mr. WALKER. I believe it came up this morning.

Senator KENNEDY. We have not received it.

Mr. WALKER. I apologize.

Senator KENNEDY. We have a rule on that for 24 hours so that we are able to better prepare ourselves.

Well, you will have to summarize it. Mr. Nelson, we will hear from you.

STATEMENT OF PANEL CONSISTING OF HON. ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; AND WILLIAM G. WALKER, DEPUTY ASSISTANT SECRETARY FOR CENTRAL AMERICAN AFFAIRS, DEPARTMENT OF STATE

Commissioner NELSON. Mr. Chairman, thank you again for the chance to be here. I will be sure to keep my visa current so that I will be able to join you regularly. We do appreciate the continued excellent working relationship with you and the staff and of this Subcommittee, as it has also been in the past.

I appreciate your including in the record our statement. We did attach to our statement, and would like it for the record also, a number of pieces of testimony by both State Department and INS witnesses in the past, because I think they reflect the fact that the Administration has consistently opposed this legislation over the last 4 or 5 years. Our position remains the same. We believe this legislation is both unnecessary and, more significantly, does undermine the comprehensive and orderly system created by the Refugee Act of 1980, which I know you and members of this Subcommittee have been very active in implementing along the way, and also the Immigration and Nationality Act recently amended by the very comprehensive Immigration Reform and Control Act. We think that our prior position is solidified and is even more appropriate at this time.

OPPOSED TO LEGISLATION

As noted in our testimony, this legislation, S. 332, is not an appropriate response. We have tried to get away from country-specific legislation in immigration. I think we have made great strides with the Refugee Act and the Immigration Act. It skirts the purposes of those Acts; it clearly will act as a magnet for further illegal immigration which we are trying to avoid.

If you look at the Moakley-DeConcini legislation, as well intended as it is, it really is nothing more than another legalization program. Congress has dealt with that issue, and I think to extend that, another legalization program would not be appropriate.

The Refugee Act some 7, 8 years ago was passed to avoid the prior piecemeal and country-specific legislation. We have an asylum system. We have a refugee system. We have an immigration system. And they do work. These Acts should not be emasculated because some might have some concern about approval rates for Salvadorans or other situations.

It would create, I think we have to recognize, a privileged class for every Salvadoran. How about other countries? We have in this world some 40 wars of different types going on right now. We clearly cannot take people from all over the world who might suffer under some kind of economic or other disruptions. We have been the most generous, by far, of any country in refugee policies, as you know and you contribute to that. We continue that. This, I think, would go beyond the situation of the statute.

PRESIDENT DUARTE'S LETTER

Just recently, as you know, President Duarte of El Salvador, asked for an exemption from the Immigration Act for Salvadorans on economic grounds. The President properly rejected that letter because if we did it for El Salvador, we'd have similar requests from many countries in the Western Hemisphere and otherwise.

That is what I might refer to as economic EVD. The EVD asked for here in this bill supposedly is on humanitarian grounds, but there will be other testimony that it really is not the basis for that. And the humanitarian grounds, or alleged humanitarian grounds, are no different than economic grounds. All they would be doing would be bringing in millions of more people.

We have got the situation, as you mentioned in your opening statement, about the Administration's policy. This Administration has actually tempered down the EVD because it is an extra statutory remedy that should be used very sparingly. We have done so. Just recently, the State Department and the Justice Department revoked or pulled it back for Uganda. We have cut down dramatically, and so it should be used very sparingly. It is not a concept because it does go back as much into the piecemeal ad hoc system that had not worked in the past.

SYSTEM IS WORKING

Again, we are in the 200th year of our Constitution, and I think it is a good time to reflect. The Supreme Court just a few months ago came down with the *Cardoza-Fonseca* decision. The system works. They enunciated what the standard of proof would be, and we accept that. They have made it somewhat lesser than it had been earlier, and that is fine. We will manage that. That might well increase some asylum claims. The burden of proof is clearly on the applicant still; it is just a little different standard.

The point is, the system works and we ought to use it. As you well know, the asylum system goes through not only the INS but the State Department, immigration judges, Board of Immigration Appeals, and the courts—a multi-due process system that will consider a case and will consider it on its merits.

SANCTUARY MOVEMENT

I think another point that we must address here is the relation of the sanctuary movement. If you look at the sanctuary movement in the last few years, that has been discredited largely; it has been defeated in civil court, in criminal court. It has lost almost all city council-type matters in the last few years or months. Seattle recently rescinded a resolution supporting sanctuary. Los Angeles pulled back. The new Governor of New Mexico rescinded the same. And to pass this legislation would be handing a victory to the sanctuary movement.

I know you do not pass legislation based on that, but I think that has to be a consideration, especially in context of the other items we made.

LEGALIZING SALVADORANS NOW

Another thing, of course, we have a legalization program which we think works. A lot of the Salvadorans who came before 1982 would qualify. The greatest violence in El Salvador was in 1981, 1982. A lot of these people might well qualify under existing legalization programs.

It is also very interesting that the floor from El Salvador has not been that much more significant in any years. I think it points out the clear indication that those people are economic migrants. The flow back to El Salvador is immense, regular airline schedules and so forth, including people who have pending asylum claims. I think the idea of people returning to El Salvador, other than certain individual cases—and a number are granted asylum—that there just is not the serious situation as claimed by many.

So if Congress wishes to further study this matter, obviously they can. GAO came in with a recent report. If further study is in order, do so but not on a 2-year moratorium because clearly you have established the case; and once the people are here, they will not leave. So the idea of holding it for a study just is not feasible.

In summary, Mr. Chairman, there is no need for this legislation. Congress should reject it clearly. Congress should not allow disagreements with our foreign policy, whether merited or not, in Central America and under-cut the sound foundations of U.S. immigration policy. The President and others have said one of our concerns in Central America is we not develop a refugee flow. That is why we need democracy down there so we do not have the thousands and millions coming as refugees. But this legislation would undercut our existing refugee act and immigration act. It is country-specific legislation contradicting the intent of the Congress, undercutting our whole comprehensive plan. For these reasons, with all respect, we think this would be ill-advised legislation, and the Administration vigorously opposes it.

Thank you, Mr. Chairman.

[The statement of Commissioner Nelson follows:]

STATEMENT

OF

ALAN C. NELSON
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to comment on S.332 which you are considering today. As you know, we have made our position on extended voluntary departure for Salvadorans known to Congress many times over the past several years. The Administration can only repeat and reaffirm our opposition to such a measures. We believe that this legislation undermines the comprehensive and orderly system created by the Refugee Act of 1980 as well as this nation's entire immigration system covered by the Immigration and Nationality Act and augmented by the Immigration Reform and Control Act of 1986. Attached hereto are copies of previous Administration testimony in opposition to this issue that I would like submitted for the record: the statement of Laura J. Dietrich, Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs; the statement of Maurice C. Inman, former General Counsel, Immigration & Naturalization Service; the statement of the Honorable Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs; and finally, my statement of June 20, 1984.

The Administration is opposed to this bill because it is not an appropriate response to the problem it purports to address. If the purpose of the bill is to protect Salvadorans from random or war-related violence in their countries, it fails: the bill only proposes to offer refuge to those who are here and they ignore nationals of other countries affected by violence. Further, GAO has already examined this issue in various reports on the asylum process and in particular in a report issued this month analyzing the extent of problems faced by returning Salvadorans.

In light of the legalization provisions of the Immigration Reform and Control Act (IRCA), it is wholly inappropriate to draft country-specific legislation that skirts the purpose of the IRCA and would act as a magnet to attract countless new illegal entrants from El Salvador, as well as other Central American countries.

In this context, I would like to focus my remarks on four specific issues. The first issue is why the Refugee Act of 1980 should not be circumvented by this bill. The second concerns the asylum process and why we should leave it alone. The third issue is that the bill is nothing more than another legalization program for El Salvadorans. The fourth issue relates to the proposed analysis of other countries and their policies concerning the return of Salvadorans, and other nationals to their home countries.

THE REFUGEE ACT OF 1980

S.332 would establish an extraordinary and unique procedure for handling nationals of El Salvador without regard to their entry into the United States and without regard to existing law and policy which are intended to treat aliens of all nationalities in the same way. Congress passed the Refugee Act of 1980 to supplant what had been piecemeal and country-specific legislation under which aliens had previously been admitted to the United States. Under the Refugee Act, any alien can apply for asylum regardless of his nationality or origin. While there have been attacks based on the fact that aliens from different countries have different asylum approval rates, there are logical and sound reasons for that fact. The Refugee Act of 1980 should not be emasculated because some individuals believe the approval rate for Salvadorans should be higher.

S.332 proposes to circumvent the comprehensive asylum process established only seven years ago and return to the ad hoc discriminatory approach of the past. Title III of this bill would prohibit the Attorney General from deporting, for approximately the next two years, virtually all nationals of El Salvador who are present or who enter the United States illegally. In essence, this legislation would create a privileged class for every Salvadoran regardless of whether or not the individual has a legitimate claim to asylum.

This legislation will also hasten other countries requesting that they be provided with preferential treatment. Just the talk of extended voluntary departure has triggered numerous requests to the Attorney General that aliens of other countries be given similar treatment if we offer extended voluntary departure to Salvadorans. President Reagan responded recently that the U.S. is unable to honor President Duartes request for special status for Salvadorans in the United States. What we are not prepared to do under the Attorney General's discretion, therefore, should not be done legislatively.

The purpose of the Refugee Act of 1980 was to get away from country-specific legislation. In passing the legislation, the 96th Congress intended it to provide the sole vehicle for meeting U.S. humanitarian obligations relating to the victims of persecution. As stated in the Senate report on the Senate version of the bill:

> The Refugee Act of 1979 establishes for the first time a comprehensive United States resettlement and assistance policy. It reflects one of the oldest themes in America's history--welcoming homeless refugees to our shore. It gives statutory meaning to our national commitment to human rights and humanitarian concerns....And it places into law what we do for the refugees now by custom and on an ad hoc basis. S. Rep. No. 96-256 (1979) at 1.

The concept was to remove from the Executive Branch discretion to use the parole power to bring in large groups of refugees on an ad hoc basis, as well as to eliminate Congressional debate over special legislation for various nationalities or groups.

As to who was covered by the legislation, the Conference Committee was clear that the legislation would incorporate "the internationally accepted definition of refugee contained in the U.N. Convention and Protocol relating to the status of refugees...as well as Presidentially specified persons within their own country who are being persecuted or who fear persecution." However, persons who themselves had engaged in persecution as well as those fleeing military or civil disturbances were excluded from the definition.

The genesis of S.332 originates with the claim that Salvadorans as a national group, even though here illegally, should be allowed to remain in the United States. As I have indicated previously, this clearly contradicts our national immigration policy and opens the door to all other countries of the world making the same request of the United States.

ASYLUM ADJUDICATION

Proponents of S.332 claim the legislation is necessary because Salvadorans do not get a high enough percentage of their asylum applications approved; therefore, they conclude that the asylum adjudication process discriminates against Salvadorans. This is simply not the case.

Asylum applications, issued in accordance with the Refugee Act of 1980, provide common procedures for handling asylum requests regardless of nationality and there are minimal procedural differences between filing with INS District offices and with immigration judges. In the former situation, the alien is interviewed by an INS asylum officer who has received specific training in the in the adjudication of asylum claims. In the latter case, an alien who is being processed for an exclusion or deportation proceeding can initiate a claim before an immigration judge.

The asylum application is then sent to the Department of State, Bureau of Human Rights and Humanitarian Affairs for an advisory opinion. After an opinion is received from the Department of State regarding the basis of the individual asylum requests and conditions in the questioned country, a decision is reached on the application. If an application is denied by the INS District Director, the application can be renewed in a deportation or exclusion hearing before an immigration judge, and ultimately the case can be appealed to the United States Courts of Appeals if there is a legal deficiency in the case. These are full due process hearings with fact finding under oath before the immigration judge. The applicant is also entitled to counsel and may present evidence and testimony at such hearings.

I will not repeat previous testimony offered before this subcommittee as to why so many Salvadoran asylum applications are denied, but the bottom line is that most of them simply lack substance. The recent Supreme Court decision INS v. Cardoza Fonseca, No. 85-782, (U.S. Mar. 9, 1987), may result in more asylum grants. The burden of proving whether or not one should receive asylum still however rests with the applicant. INS would welcome increased asylum grants as long as the process is uniformly applied to nationals of all countries.

It is logical that when a country has a long history of supplying economic migrants to the United States, that the number of people fleeing persecution is going to be lower than the case of a country that is half way around the world where there is no history or tradition of going to the United States to find work. In a recent Washington Post article, Jay Mathews, reporting on a recent survey of the Intergovernmental Committee on Migration(ICM), reported that, with respect to Salvadorans, the large majority of returnees state their primary motive in going to the United States was the "poor economic situation in El Salvador and the desire to find employment abroad."

In asking the United States to give a specific immigration benefit to Salvadorans reinstates a previous and rejected immigration policy that singled out particular nationalities for protection. Currently, there are over 40 wars of one type or another going on in the world. There is no way that the

United States can accept every person who is affected by those wars and who may want to leave their homeland.

While we defer to the views of the Department of State on the matter of human rights and conditions in various countries, we note that in a recent GAO study of asylum processing in this country, GAO pointed out that:

> There is widespread perception that the denial of an asylum application is tantamount to deportation and the potential for a denied applicant to be a victim of persecution upon return to his or her country. Our analysis showed that few denied asylum applicants are actually deported.

The entire theory that an individual who goes through the asylum process in this country is in imminent danger of being sent back to his or her country just does not square with the facts. No one is deported without a due process hearing and the opportunity to appeal a denied asylum claim.

Further, under the legalization program authorized under the Immigration Reform and Control Act, many Salvadorans will have the opportunity to normalize their status. Because of the importance of better ordering our policy toward undocumented aliens, which affects literally millions of nationals from every country in the world, we do not want to make exceptions which could well turn into precedents for other countries and begin to unravel the meaningful immigration legislation that resulted in both the Refugee Act of 1980 and the Immigration Reform and Control Act of 1986.

An ironic result would occur if S.332 were enacted into law: the sanctuary movement generally discredited and defeated in both civil and criminal courts, city councils, state houses, and the American public -- would be handed a victory. Just as the erroneous claims of the sanctuary movement have been rejected, similar erroneous grounds for S.332 likewise should be rejected by the Subcommittee and the entire Congress. A close analysis of the supposed reasons for these bills will indicate that there is virtually no reason why these countries should be treated differently than the rest of the world.

ANOTHER LEGALIZATION PROGRAM

This proposed bill is, simply put, nothing more than a legalization program for those El Salvadorans who arrived in the United States after January 1, 1982. This is grossly unfair to the rest of the world and has the potential of unravelling the delicate balance upon which the Immigration Reform and Control Act was passed.

I have compiled some statistics from my Southern Region which has the largest percentage of El Salvadoran aliens in the United States. As of June 9th, 1987, 1396 El Salvadorans applied for legalization. This proves to me that at least for the El Salvadorans for whom this bill was originally introduced, the aliens who came here when the civil war was at its height, have a remedy, namely legalization.

For those aliens who came after January 1, 1982, I ask the question: why should they be entitled to a special benefit that is not available to the rest of the world? This is particularly true at a time when studies have shown that it is safe to return to El Salvador and there is no documentation that unless you are a political adversary of the Government that you will meet any harm in Nicaragua.

STUDY OF OTHER COUNTRIES

Finally, the proposed GAO study required by H.R. 618 (a similar piece of legislation) concerning the treatment of Salvadorans by other countries is immaterial. If the Congress wishes to study practices of other countries, it can be done without granting a two year grace period to all Salvadorans who happen to be in the United States.

CONCLUSION

Given the above mentioned considerations, there is no need for this bill. The Subcommittee should not favorably report the bill or the Congress should reject it. Congress should not allow disagreements with our foreign policy in Central America to undercut the sound foundations of U.S. immigration policy.

To begin to undertake country-specific legislation, contradicts the intent of the Congress in establishing the Refugee Act of 1980 and also undercuts comprehensive immigration policy embodied in the Immigration Reform and Control Act of 1986 passed by the last Congress. For these reasons the, Administration vigorously opposes passage of S. 332.

PREPARED STATEMENT OF

LAURA J. DIETRICH
DEPUTY ASSISTANT SECRETARY OF STATE FOR
HUMAN RIGHTS AND HUMANITARIAN AFFAIRS

BEFORE THE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION REFUGEES AND
INTERNATIONAL LAW

UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

NOVEMBER 7, 1985

Mr. Chairman and members of the Subcommittee:

I am grateful for this opportunity to appear before you today.

As every member of the Subcommittee knows, El Salvador remains a troubled country, but one in which extraordinary political progress is being made. Last March's elections represent yet another step in a five-year evolution as a democratic nation. The country still suffers from a dedicated Marxist insurgency in which guerrillas are actively engaged in terrorist attacks. Human rights abuses have obviously not disappeared, but disappearances and death squad assassinations have been significantly reduced. By anybody's standard, violence has dropped - from a high of 9,000 civilian deaths in 1980 to 771 in 1984, as reported by the press. Although severely depressed, the economy showed a small increase in the gross domestic product in 1984.

Meanwhile, the steady migration of Salvadorans to the United States continues, and from an estimated 300,000 here before the violence broke out in 1979, there are an estimated 500 to 750,000 here today. The United States is thus confronted with a number of significant immigration issues regarding El Salvador. Who are the migrants? Are they refugees, or are they motivated solely by economics? How do we deal with the asylum applications? For those not entitled to asylum, how do we respond to their desire to live in the United States?

The asylum issue is in a sense an easy one. The Immigration and Nationality Act implements the U.S. obligations under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Our law sets forth the standards by which an asylum application must be judged. The Attorney General may grant asylum if he determines an alien in the United States meets the definition of a refugee, that is, a person who has fled his country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. We apply these standards fairly. In fact, only a limited number of aliens, irrespective of their nationality, can meet them. This is true of asylum applicants from El Salvador. This has occasioned much criticism of the Administration's asylum policy toward El Salvador, but in fact we have no "asylum policy" crafted especially for El Salvador or any other country; we apply the same standards to each. Recommendations for the approval of applications from Salvadorans and Nicaraguans both run at a relatively low rate. This reflects no policy decision, nor does it reflect the state of our bilateral relations with either government; it simply reflects the fact that all asylum applicants must meet the same legal standards in order to be granted asylum. We are well aware that much criticism could be ended were the number of Salvadoran asylum approvals higher. But, to approve asylum applications for partisan political reasons would ignore the law. We recommend in favor of applications that meet the standards and against those that do not. And although the percentage of approvals for asylum claims is only three cent, El Salvador in fact ranks fourth in the world in terms of ual numbers approved by nationality group.

The argument is then made that all Salvadorans, even those who do not qualify for asylum, should not be deported to El Salvador but rather allowed to remain here. As you know, the Administration does not concur with this view even if it were only a temporary suspension. All suspension of deportation decisions require a balancing of judgments about several factors, including foreign policy, humanitarian, and immigration policy implications.

In the case of El Salvador, the immigration policy implications of suspension of deportation are enormous. Here we have a country with a history of large-scale illegal immigration to the United States. Can anyone doubt that a suspension of deportation would increase the amount of illegal immigration from El Salvador to the United States? An intelligent and industrious Salvadoran weighing a decision to try illegal immigration to the United States knows that one of the risks is deportation, which might occur before he has had a chance to earn back the costs of the journey. If we remove that possibility of deportation, it is logical to suggest that illegal entry becomes a more attractive investment.

There is reason to think that the "magnet effect" would be overwhelming. In a Spanish International Network exit poll of voters last March, 67% of Salvadorans responded "yes" to the question "Would you emigrate to the United States?". Over $30 million per month is sent home from Salvadorans working illegally in the United States. In addition, the vast majority of Salvadorans who do file for asylum allege no fear of persecution but state that they came to the United States to work. The evidence simply does not indicate that most Salvadorans are here in this country to escape persecution.

Of course, some Salvadorans are refugees who may be and have been granted asylum, and they do not need suspension of deportation to be protected. So, by definition, when we discuss suspension of deportation for the group which is not eligible for asylum, what we are discussing is whether people who emigrate from El Salvador to the United States illegally, for reasons other than fear of persecution should be permitted to reside here. If one says yes to this question then we do not have an immigration policy with regard to El Salvador. We have abdicated the responsibility to have one.

It was our country's ad hoc approach to refugee flows that prompted the Congress to pass the Refugee Act of 1980. It was the specific intent of the Congress to end nationality-specific measures that provided benefits for persons from one country and left other persons with similar claims in limbo. It was also the Refugee Act that incorporated the 1951 Convention's definition of a refugee into our law. Under that Act each asylum application is to be examined on an individual basis.

Legally and morally, the distinction between economic migrants and political refugees matters greatly. The United States has undertaken the protection of refugees, but has not agreed to accept for permanent residence every illegal immigrant who reaches our shores. There is no such thing as a "self-appointed refugee." Each person who seeks the protection of the United States must apply for asylum, and each application is examined on a case-by-case basis to see if it meets the standard of law. Asylum is a special and narrow exception to our laws, and not meant to be an extra immigration program. We grant asylum only when someone can show a well-founded fear of persecution if he or she were to return home. Under our laws, generalized conditions of poverty and civil unrest do not entitle people who leave their homelands to settle here. If this were our test, half the 100 million people living between the Rio Grande and Panama would meet it, as would hundreds of millions more people in other parts of the world.

Some people argue that it is too hard for Salvadorans to be granted asylum, and therefore Americans who support them are morally bound to break the law. But the United States is an incredibly generous country, admitting 430,000* persons under regular immigration procedures, plus 70,000 refugees worldwide in fiscal year '85 alone. This country does not deserve the abusive rhetoric that has become standard fare from those who evade the very system established to protect those who need protection the most. The notion that the only way to stay in this country is to enter illegally and break the law once you are here, is simply not valid. The United States issued over 8,000 immigrant visas to

Salvadorans last year in addition to 328 approvals on asylum claims.

*270,000 Regular Immigrants
160,000 Immediate Relatives - spouses, children,
parents of citizens

Some groups argue that illegal aliens who are sent back to El Salvador meet persecution and often death. Obviously, we do not believe these claims. If we did, we would not deport these people back to El Salvador. Twice, in recent years, the United States Embassy in San Salvador has made attempts to track deportees and see if they were being persecuted; we concluded that they were not. In February we asked the Archbishop and Tutela Legal, the human rights office of the Archdiocese of El Salvador, whether they believe there was a pattern of persecution of deportees. They replied that they did not.

It is noteworthy that these accusations of abuse toward deportees are lodged by some American activist groups critical of United States policy in El Salvador. They find no echo or source in complaints from Salvadoran human rights groups, which have never made this claim. And that stands to reason. El Salvador is a country, as noted above, in which emigration abroad is a common and respected means of self-improvement, and it would be odd to think that this action engaged in by hundreds and thousands of Salvadorans, by perhaps a quarter of the population, was viewed by anyone as proof of a suspicious association. We have interviewed deportees at the airport, in the Embassy, and after they have returned to their homes. We have never met anyone who thinks he is a target because he has been deported from the United States. Surely there must come a time when any fair-minded observer concludes that this alleged pattern of wide-scale abuse of deportees is just a fiction unsupported by evidence.

The distinction between "targeting" of deportees, as opposed to deportees facing general conditions in today's El Salvador, is important. If we had evidence that there was a pattern of persecution against deportees we would have cause to be greatly concerned. But if the only reason we would allow them all to stay in the United States is that they would face the same conditions as the five million other citizens of El Salvador, we have no grounds under our law for allowing them to stay. If this were so, we might simply invite every citizen of El Salvador to move to the United States.

Many Salvadorans are told that they will be deported into the hands of the military, and are sold a gruesome picture of the United States "dumping" them at the airport. In truth, no one is "dumped" at the airport. There is now a program in place conducted by the Intergovernmental Committee for Migration (ICM), a highly respected international organization. ICM meets every Salvadoran who has been sent home by the United States. Each is offered humanitarian assistance in meeting up with family members, each is given a temporary I.D. if needed, given money for travel home, or a place to live if the individual does not want to go to his hometown or village. Each has explained to him the assistance programs of the Salvadoran government and the church. Each person is invited to send in a questionnaire after he has returned to his home, describing any difficulty encountered. If a returnee does not send in his questionnaire, he receives a reminder letter. If ICM still does not hear from the returnee, they attempt to meet him in the normal course of field interviews.

In conclusion, I do not believe that the appropriate response to the problems of poverty or violence in El Salvador is to allow any Salvadoran who wishes, to simply live in America instead - any more that I think this is true for Guatemala, or Haiti, or Nicaragua, or Sri Lanka, or Afghanistan, or Iran, or Uganda, or Ethiopia, or Lebanon, or Vietnam, or Zimbabwe. My point, of course, is that in a very large number of countries millions of people, and indeed, tens of millions, face lives which any American can only view as desperate. How do we respond? We respond with our willingness to allow hundreds of thousands to legally immigrate to the United States. We respond with our asylum and refugee programs, which are the most generous in the world. We respond with our foreign aid program. And we respond with various political and diplomatic efforts to resolve disputes and reduce violence. It does not seem to me that a sensible response can be to say that all these people, if they can make it to the United States, can stay. We can and we must do very many things to address the urgent and desperate humanitarian needs of tens of millions of people throughout the world, but one thing we really cannot do for them all is tell them to move to America.

I therefore respectfully suggest that the current policy is an appropriate one, combining large amounts of economic assistance, energetic diplomatic efforts, and the grant of asylum to those with a well-founded fear of persecution. We continue to believe that EVD for Salvadorans is an inappropriate measure.

STATEMENT

OF

MAURICE C. INMAN, JR.
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IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

COMMITTTE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES
AND INTERNATIONAL LAW
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 822

ON

NOVEMBER 7, 1985

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to comment on H.R. 822 which you are considering today. The Administration cannot support this Bill. We believe that it undermines the comprehensive and orderly system created by the Refugee Act of 1980 as well as this nation's entire immigration system covered by the Immigration and Nationality Act. This has been stated in previous testimony before this subcommittee, the Rules Committee and the Senate Judiciary Committee.

The Administration is opposed to this Bill because it proposes an inequitable solution to a problem that does not exist. If the purpose of the Bill is to protect El Salvadoran nationals from random or war-related violence in their country, it fails: the Bill only proposes to offer refuge to those who are here and it ignores nationals of other violence affected countries. It also constitutes a magnet which will attract countless new illegal entrants from El Salvador.

In short, the Bill accomplishes nothing that cannot better and more equitably be done under the existing Refugee Act of 1980. In this context, I would like to focus on two issues. The first concerns the reasons why the Refugee Act of 1980 should not be circumvented by this Bill. The second concerns the procedures for handling asylum claims from aliens in the United States -- whether they walk in and file an application with a district director or have been apprehended and are filing with an immigration judge.

Reversing the Intent of the Refugee Act

This Bill would establish extraordinary and unique procedures for handling nationals of El Salvador in the United States without regard to their reasons for entry into the United States and without regard to existing law and policy which are intended to treat aliens of all nationalities in a similar fashion. Congress passed the Refugee Act of 1980 to supplant the piecemeal and nation-specific legislation and parole programs under which refugees had previously been admitted to the United States. It set up a system under which any person--regardless of origin--can apply for and receive individual consideration of the merits of his or her claim to asylum or refugee status.

H.R. 822 proposes to circumvent this system, established by the Refugee Act only five years ago, and to return to the ad hoc and discriminatory approach of the past. Title III of this Bill would prohibit the Attorney General from detaining or deporting virtually all nationals of El Salvador who are present in or, as a practical matter, who enter the United States during the next two years. In essence, it would create a class of virtually every Salvadoran who can manage to enter the United States and, regardless of whether the individual has a legitimate claim of persecution, would provide a period of approximately two years during which members of this class could remain in the United States. This raises the prospect of a stream of Salvadorans to illicitly enter the United States under official governemental protection. In effect, Congress would encourage hundreds of thousands of Salvadorans to enter the United States in any possible manner to take advantage of the generous provisions of this Bill. Furthermore, the passage of this Bill would encourage the introduction of piecemeal legislation providing for similar benefits for people fleeing other countries.

Let me now review the legislative history of the Refugee Act of 1980. The United States became a signatory to the United Nations Protocol Relating to the Status of Refugees 1968. In ratifying the Protocol, the Senate made it clear that it believed that the Protocol was consistent with existing U.S. immigration laws. But the Protocol was not self-executing. That is, while the United States has undertaken international treaty obligations, those obligations were not enforceable in the U.S. courts without the passage of domestic legislation.

The Refugee Act of 1980 was that implementing domestic statute. In passing this legislation, the 96th Congress intended to provide the sole vehicle for meeting U.S. humanitarian obligations relating to victims of persecution. As stated in the Senate Report to the Senate version of the Bill:

> The Refugee Act of 1979 establishes for the first time a comprehensive United States refugee resettlement and assistance policy. It reflects one of the oldest themes in America's history --welcoming homeless refugees to our shores. It gives statutory meaning to our national commitment to human rights and humanitarian concerns.... And it places into law what we do for refugees now by custom and on an ad hoc basis. S. Rep. No. 96-256 (1979) at 1. (Emphasis added.)

Note the last phrase. A major purpose of Congress in passing this Act was to get away from nation-specific refugee legislation. The concept was to remove from the Executive Branch discretion to use the parole power to bring in large groups of refugees on an ad hoc basis, as well as to eliminate Congressional debate over special refugee legislation for various national groups.

Former Secretary of State Cyrus Vance and Congressman Peter Rodino, Chairman of the Committee on the Judiciary, both emphasized that the Bill was meant to address all refugee situations, emergency and otherwise. Both characterized the legislation as "comprehensive" and pointed out, "... the necessity for enacting coherent legislation to meet future and continuing refugee emergencies."

As to who was covered by the legislation, the Conference Committee was crystal clear that the legislation would incorporate "the internationally-accepted definition of refugee contained in the U.N. Convention and Protocol Relating to the Status of Refugees ... as well as Presidentially specified persons within their own country who are being persecuted or who fear persecution." However, persons who themselves had engaged in persecution as well as those fleeing military or civil disturbances were excluded from the definition.

In summary, there are several conclusions that may be drawn from the legislative history and the language of the Refugee Act of 1980. First, the U.N. Protocol was implemented by the Refugee Act of 1980. The Refugee Act was designed to be the only implementing instrument. Second, the Refugee Act was intended to be the comprehensive method by which the United States would respond to all refugee-producing situations. Third, the Refugee Act was meant to apply to all persons who might be termed "refugees" under domestic law and regulation and to meet the human rights and humanitarian obligations of the United States to such persons. Fourth, the Conference definition of "refugee" specifically excluded the language of the Senate version which would have encompassed displaced persons.

The Refugee Act of 1980 also contains the sole basis for the United States to meet its obligation of "non-refoulement" of refugees under the U.N. Protocol. In addition to giving a statutory basis for asylum, the Refugee Act amended section 243 (h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h), for this express purpose.

Given this fact, it is simply untenable to assert, as some persons have done, that El Salvadoran nationals in the United States may claim a basis under any other international agreement or human rights law to enter and remain in the United States. Such an assertion flies d[illegible]ce of Congressional intent to establish a comprehensive refugee policy, to assist refugees of special concern, and to meet international obligations relating to "non-refoulement" by means of the Refugee Act of 1980.

Asylum Adjudication

Some proponents of this Bill have claimed that a purported discriminatory policy against Salvadoran asylum applicants is a key reason why a special temporary stay of deportation provision must be enacted for Salvadorans. Asylum regulations issued in accordance with the Refugee Act of 1980 provide common procedure for handling asylum requests regardless of nationality and with only minimal differences if the alien files with the district director or presents his claim to an immigration judge. In the former case, he or she is interviewed by an immigration examiner and then the asylum application is sent to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State for an advisory opinion. After the advisory opinion is received, the file is reviewed and a determination is made in the case. If the district director denies the application, the alien may renew the claim in proceedings before an immigration judge.

In the case of an alien who is being held for exclusion or deportation proceedings, the process is basically the same. First, the hearing will be recessed to permit the alien time to submit an asylum application. Second, if the alien is being detained his or her bond can be lowered based on facts presented at the redetermination hearing which were unavailable to the INS district director when he set the original bond.

Third, the application will be sent off to BHRHA. After the BHRHA advisory opinion is received, the immigration judge conducts a full, due process hearing with fact finding under oath at the end of which he issues a decision on the application. The applicant may have counsel and may present evidence and testimony at such hearing.

The Administration has been accused of having made a deliberate policy decision to deny applications from nationals of friendly Central American governments. The administrative process makes the function of the immigration judges separate from that of the INS and its district directors; the State Department's function is separate from both; the reviewing administrative panel, the Board of Immigration Appeals (BIA), is bound by its own precedents which apply to all nationalities; and the U.S. Courts of Appeal, which review the BIA decisions, unquestionably are not part of the Administration. To give any credence to the deliberate policy theory, you have to believe that there is an organized conspiracy, joined by many employees of these separate organizations specifically to deny asylum to El Salvadorans. In sum, it it not our policy to deny legitimate applicants this important protection.

The assertion that the INS denies all Salvadoran applications for asylum simply isn't true. We grant the ones which demonstrate a well-founded fear of persecution. In Fiscal Year 1984, we granted over 300 at the district director level. Over 500 individuals were covered by such grants. In Fiscal Year 1985, there were 74 grants involving 129 individuals. More were approved by immigration judges.

Why are so many denied? As a matter of fact many applications for asylum by El Salvadorans are not merely poorly documented, they are often patently frivolous on their face. The petitioner must carry his burden of proof by providing specific evidence and concrete facts in support of his particular claim by way of testimony or documentary submissions. What does a district director or an immigration judge do with an application such as this one:

- The page requesting information detailing the reasons for the application essentially is blank, but for the response to the question, "If you return to your country, for what specific reasons do you believe you will be persecuted?" The applicant didn't check "race"; nor "religion"; nor "nationality"; nor "political opinion"; nor "membership in a particular social group"; she checked "other." And what was the "other" reason? She believes she will be persecuted "because of the war." The Refugee Act of 1980 was not designed to provide relief for this kind of situation.

- In response to the question, "What do you think would happen to you if you return?" She answered: "Nothing. I would go home."

- The addendum to this I-589 is equally revealing. She left El Salvador, "Because of the war" traveling to the U.S. through Guatemala and Mexico "to see my uncle." She didn't apply for asylum in either of those other countries, "Because I don't like Mexico or Guatemala."

Based on the information provided by this applicant, should she be granted asylum? There are quite literally hundreds of such applications. All these applicants are interviewed by an immigration officer and get full asylum hearings before an immigration judge. All have a right to appeal an adverse decision to the BIA. They may further appeal to the federal courts. No other country in the world provides so elaborate a series of procedural safeguards to ensure that individuals who fear persecution are not returned to nations where they would be harmed.
Our system provides so many procedural safeguards that over 71% of El Salvadoran nationals apprehended in Fiscal Years 1982, 1983, and 1984 are still in the legal process. That's over 35,000 people. The inescapable conclusion to be drawn from the frivolousness of many of the applications is that the asylum process is being abused by people who have no valid claims under U.S. law but who wish for other reasons -- perhaps economic -- to remain here for a period of time.

Adverse Consequences of the Bill

The legislation itself would accomplish little that has not already been done and it would vitiate the entire purpose of the Refugee Act. Further, it will seriously hamper enforcement of the Immigration and Nationality Act:

While we would welcome any new study by the Government Accounting Office, or other entity, studies such as those called for by H.R. 822 previously have been done. Surveys of refugee camps and returnees are going on all the time. Non-governmental organizations have conducted surveys of returning Salvadorans. The results of these studies have been the same each time: (1) the people in the refugee camps primarily are displaced persons; and (2) Salvadoran returnees are not persecuted or harmed because they have been expelled from the United States.

The temporary stay of deportation for Salvadorans, called for in Title III of the Bill, simply is unnecessary. No one is forcibly returned to El Salvador -- or any other place -- who has not had a full and fair opportunity to exercise his or her full due process rights under the 14th Amendment.

A serious concern is that by granting these temporary stays of deportation, the historic flow of migrants from Central America will be swelled by even more persons seeking economic betterment. Plainly said: If a Salvadoran migrant can find his way to the United States, as tens of thousands of Central Americans do each year, H.R. 822 will allow him to stay, sink roots, and find other means to "normalize" his immigration status. This will make more difficult our efforts to control illegal entry along our Southern border and establish trends which may lead to an invasion of "feet people" magnifying the migration from the region making what we already see as a stream become a torrent. Although the Bill applies only to Salvadorans in the United States at the time of enactment, it will be impossible to preclude later entrants who assert that they were here prior to the effective date.

INS apprehensions of Salvadoran nationals increased more than 100 percent from 1978 to 1984, from 8,968 to 18,920. Proponents of this Bill argue that these figures evidence the flight from persecution or violence. However, there was no significant jump in 1979 and 1980 immediately after the 1979 changes in government and the period of greatest civil disorder in El Salvador. Instead the largest number of illegal Salvadorans have been arrested this past year, when by all accounts the duly and popularly elected government of El Salvador has been effective in governing of the country and the number of alleged human rights violations and the incidents of violence has decreased significantly.

A second question in this regard: Is this "temporary safe haven" really temporary? Once here, how many of the Salvadorans are likely to go home? Instead of returning to El Salvador once the violence subsides, it is probable that these beneficiaries of temporary stays of deportation will take the route of other migrants before them and maintain their resettlement here in the United States. It would be nearly impossible to locate and remove the estimated 300,000 to 500,000 illegal Salvadoran aliens after the temporary stays expired.

The Refugee Act of 1980 created a system under which all national groups would be treated equally and fairly. To stay deportation for El Salvadorans while compelling other nationalities to return to similar unsettled conditions is fundamentally unfair.

I have approached this subject from the ground up because I believe that it is important for this Subcommittee to understand that the system created by the Refugee Act of 1980 is in place and works. It is folly to return to the old system, which was abandoned by the will and wisdom of Congress a short five years ago for sound reasons which remain true today.

To summarize -- Passage of this Bill would be contrary to the intent of Congress in establishing the Refugee Act of 1980, which was to turn away from the concept of "nationality specific" enforcement of our immigration laws. We have a fair and workable system of asylum. Instead of establishing a special system of temporary stays of deportation for Salvadorans, those elected representatives and the segments of this society that support this legislation should redouble their efforts to make the current system work.

The Administration believes that the current system works if only the applicants will use it. This committee should consider this Bill in the immigration context and not support H.R. 822, which is ill conceived and will certainly have a "magnet" effect, encouraging high levels of continuing illegal entry by people from Central America.

On behalf of the Administration, I urge you not to support H.R. 822.

I would be happy to address any question from the Committee.

STATEMENT BY

HONORABLE ELLIOTT ABRAMS
ASSISTANT SECRETARY OF STATE
FOR
HUMAN RIGHTS AND HUMANITARIAN AFFAIRS

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW
HOUSE OF REPRESENTATIVES

APRIL 12, 1984

Mr. Chairman and members of the Subcommittee:

I am grateful for this opportunity to appear before you today. As every member of the Subcommittee knows, and indeed as every American must by now be well aware, El Salvador is a country troubled by poverty, violence, overpopulation, and a history of oppression. For a number of years, Salvadorans have taken advantage of economic opportunity elsewhere. Prior to the war between El Salvador and Honduras in 1969, a large number were living in Honduras. Through the 1970s, hundreds of thousands of Salvadorans came to the US. The increased violence in El Salvador prevalent since 1980 no doubt increased the incentives to leave the country, as have the economic difficulties which the war has only worsened.

The US is thus confronted with a number of significant immigration issues regarding El Salvador. It is difficult for Salvadorans to get visitors' visas to the US and difficult for them to get immigrant visas as well. We face a very significant amount of illegal immigration from El Salvador, and a large quantity of asylum applications. How do we deal with the asylum applications? To those not entitled to asylum, how do we respond to their desire to live in the United States?

The asylum issue is in a sense an easy one. US law, in incorporating the definition of a refugee contained in the Convention and Protocol Relating to the Status of Refugees set forth the standards by which an asylum application must be judged. We apply these standards and a limited number of aliens, irrespective of their nationality, can meet them. This is also true of asylum applicants from El Salvador. This has occasioned much criticism of the Administration's asylum policy toward El Salvador, but in fact we have no "asylum policy" toward El Salvador or any other country; we apply the same standards to each. In the last few months recommendations for the approval of applications from Salvadorans and Nicaraguans have been running at roughly the same rate, and though of course there are variations for both countries, about 15 percent of applications can meet legal standards. This reflects no policy decision, nor does it reflect the state of our bilateral relations with either government; it simply reflects the fact that asylum applicants must meet the legal standards in order to be granted asylum. We are well aware that much criticism could be ended were the number of Salvadoran asylum applications that are approved higher. But, to approve asylum applications for partisan political reasons would ignore the law. In fact, we recommended in favor of applications that meet the standards and against those that do not.

The argument is then made that all Salvadorans, even those who do not qualify for asylum, should not be deported to El Salvador but rather allowed to remain here. As you know, the Administration does not concur with this view. All EVD decisions require a balancing of judgments about their foreign policy, humanitarian, and immigration policy implications. In the case of El Salvador, the immigration policy implications of EVD are enormous. Here we have a country with a history of large-scale illegal immigration to the US. Can anyone doubt that a grant of EVD would increase the amount of illegal immigration from El Salvador to the US? An intelligent and industrious Salvadoran weighing a decision to try illegal immigration to the US knows that one of the risks is deportation, which might occur before he has had a chance to earn back the costs of the journey. If we remove that possibility of deportation, it is simple logic to suggest that the illegal entry becomes a more attractive investment.

Of course, not all Salvadoran migrants to the US are solely or primarily economic migrants; some are refugees who may be and have been granted asylum, and they do not need EVD to be protected. So by definition, when we discuss EVD for the group which is not eligible for asylum, what we are discussing is generally whether people who emigrate from El Salvador to the United States illegally should be permitted to reside here. If one says yes to this question then we do not have an immigration policy with regard to El Salvador. We have abdicated the responsibility to have one.

Some groups argue that illegal aliens who are sent back to El Salvador there meet persecution and often death. Obviously, we do not believe these claims or we would not deport these people. Twice in recent years the US Embassy in San Salvador has made attempts to track deportees and see if they were being persecuted; we concluded that they were not. Last summer we asked some officials of Tutela Legal, which is the human rights office of the Archdiocese of El Salvador, whether they believed there was a pattern of persecution of deportees. They replied that they did not. It is noteworthy that these accusations which are lodged by some American activist groups critical of the US policy in El Salvador, find no echo nor did they find their source in complaints from Salvadoran human rights groups, which have never made this claim. And that stands to reason. El Salvador is a country, as noted above, in which emigration abroad is a common and respected means of self-improvement, and it would be odd to think that this action engaged in by hundreds and thousands of Salvadorans, by perhaps a quarter of the population, was viewed by anyone as proof of communist association. I submit that the notion that the people being deported are easily identifiable when they return to El Salvador is false, and the notion that they are automatically suspect is equally false.

The Subcommittee will be interested to learn that, in part in response to the great interest expressed by Chairman Mazzoli, Senator Simpson and others, we have once again attempted to study this question of the treatment of deportees. The Embassy in San Salvador was sent the names of nearly 500 deportees, selected at random. Efforts have been underway to contact every one of them in order to see what happened to them after their return. As of now, we have been able to locate or find out about roughly 35 percent of them, using Salvadoran employees so as to draw as little attention as possible to this whole survey. Of course, a substantial proportion of -- perhaps a third -- of the addresses Salvadorans had given the Immigration Service turned out to be fictitious making it impossible to locate the individuals. In other cases, the addresses given are in cities separated from San Salvador by zones of conflict, and we have not yet sent investigators out. This is the next step in our plan. In a few cases, individuals were reported by neighbors as having once again returned to the United States illegally. What is remarkable is that we have not come across a single case of abuse or murder of a deportee, nor has anyone contacted suggested that he knew of such a case. I would not suggest to this Subcommittee that we have completed here the definitive scientific study and that no further efforts are needed, and indeed our own efforts are continuing. But surely there must come a time when any fair-minded observer concludes that this alleged pattern of wide-scale abuse of deportees is just a fiction unsupported by evidence.

I am sometimes asked why the US does not do anything to solve the humanitarian problem of poverty and displaced persons and violence in El Salvador. This is a startling question, when you consider the enormous amount of American diplomatic and political effort aimed at bringing democracy and peace to El Salvador, and the extraordinary amounts of economic aid which we give and increased amounts which the Administration has urged upon Congress.

Our proposal of 341 million dollars in economic assistance for FY 85 to El Salvador is certainly a valuable response to the humanitarian problem there. I do not believe that the appropriate response to the problems of poverty or violence in El Salvador is to allow any Salvadoran who wishes to, simply to live in America instead -- any more than I think this is true for Guatemala, or Haiti, or Nicaragua, or Sri Lanka, or Afghanistan, or Iran, or Uganda, or Ethiopia, or Lebanon, or Vietnam, or Zimbabwe. My point, of course, is that in a very large number of countries millions of people, and indeed, tens of millions, face lives which any American can only view as desperate. How do we respond? We respond with our willingness to allow hundreds of thousands to immigrate to the United States. We respond with our asylum and refugee programs, which are the most generous in the world. We respond with our foreign aid program, now totaling 8.89 billion dollars including the pending supplemental request. And we respond with various political and diplomatic efforts to resolve disputes and reduce violence. It does not seem to me that a sensible response can be to say that all these people, if they can make it to the US, can stay. We can and we must do very many things to address the urgent and desperate humanitarian needs of tens of millions of people throughout the world, but one thing we really cannot do for them all is tell them to move to America.

I therefore respectfully suggest that the current policy is an appropriate one, combining large amounts of economic assistance, energetic diplomatic efforts, and the grant of asylum to those with a well-founded fear of persecution.

STATEMENT

OF

ALAN C. NELSON
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

COMMITTEE ON RULES
SUBCOMMITTEE ON RULES OF THE HOUSE
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 4447 - EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

ON

JUNE 20, 1984

Mr. Chairman, and Members of the Subcommittee, I am pleased to have the opportunity to comment on H.R. 4447, which you are considering today. The Department of State has already testified as to the circumstances in El Salvador, and I will confine my remarks to sections 2 and 3 of the bill.

This bill would establish extraordinary and unique procedures for handling nationals of El Salvador in the United States without regard to their reasons for and manners of entry into the United States, and contrast to existing law and policy which are intended to treat aliens of all nationalities in a similar fashion. Congress passed the Refugee Act of 1980 to supplant the piecemeal and nation-specific legislation and parole programs under which refugees had been admitted to the United States. The stated objective of the Refugee Act was "to provide a pertinent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States...." It set up a system under which any person—regardless of origin—can apply for and receive individual consideration of the merits of his or her claim to asylum or refugee status.

However, H.R. 4447 proposes to circumvent this system set up by the Refugee Act only three years ago and return to the ad hoc and discriminatory approach of the past. Section 3 of this bill would prohibit the Attorney General from detaining or deporting virtually all nationals of El Salvador who are present in or who enter the United States during the next three years. In essence, it would create a class of virtually every Salvadoran who can manage to enter the United States and regardless of whether the individual has a legitimate claim of persecution, would provide an indefinite safe haven here in the United States. The bill specifically states that Congress may extend this period after considering the Presidential report called for under section 1 of the bill. This raises the prospect of a stream of Salvadorans illicitly entering the United States under the effective sanction of this legislation. In effect, Congress would be encouraging Salvadorans to enter the United States in any manner possible to take advantage of the provisions of this bill.

Problems are not unique to El Salvador, which is why the 96th Congress concluded that the case-by-case approach of the Refugee Act is a fairer system than the nation-specific approach it abandoned. In any case, there is no reason to lack confidence in the Attorney General's decisions on asylum applications. No credible evidence has been presented that any Salvadoran or other national deserving of asylum has been deported from the United States. Denials of asylum can be processed through several levels of administrative courts and are appealable to the federal courts.

Finally, H.R. 4447 provides for an astonishing and apparently absolute prohibition on the detention of all deportable Salvadorans. Because of judicial interpretations of the term "detain", which as you know, can mean anything from "stop and question" to physical custody, the provisions of this section could prevent the Immigration Service from taking an individual into custody in order to verify status or nationality or even persisting in questioning an individual who claimed to be a deportable Salvadoran. In practical terms, this would mean that any person claiming to be from El Salvador would be immune from the operation of the immigration laws. At a time when Congress is pressing for better enforcement this type of provision hampers effective INS operations.

In conclusion, the Department of Justice and the Administration oppose the fundamental premise of H.R. 4447 which would make an exception for Salvadorans to the orderly procedures called for by the Refugee Act to determine whether or not an individual has suffered persecution or would be subject to persecution in his or her homeland. The Attorney General has concluded upon consultation with the Secretary of State that a blanket grant of extended voluntary departure for Salvadorans would not be in the interests of the United States. Attached hereto and made part of this testimony are letters signed by the Attorney General dated July 19, 1983, and by the Secretary of State dated June 23, 1983. The comments and conclusions therein remain in effect currently.

Passage of H.R. 4447 would clearly result in thousands more Salvadorans being added to the floodtide of illegal migrants who are coming to this country outside the legal channels established under the Immigration and Nationality Act. Note that many estimate that up to 1/2 million Salvadorans are already in the United States illegally. Based on available 1982 information, this constitutes approximately 10% of the entire population of El Salvador. The Refugee Act provides a system within which to accomodate refugees from all lands. Salvadoran nationals who fear individual persecution may file for and secure asylum in the United States along with persons from all other countries. The nation-specific approach of H.R. 4447 has been and should continue to be rejected by Congress.

This completes my prepared testimony. I would be glad to respond to any questions you may have.

Office of the Attorney General
Washington, D.C. 20530

July 19, 1983

The Honorable
House of Representatives
Washington, D.C. 20515

Dear Congressman

This is in response to your letter of April 28, 1983, concerning El Salvador and requesting that Salvadoran nationals be provided temporary sanctuary in the United States. The delay in this response has been due to our taking a close look at the situation. I share your concern about the disturbances in areas of El Salvador, and the unfortunate plight of the Salvadoran nationals who have been displaced from their homeland. However, after careful consideration and review, I have concluded that the present circumstances do not warrant a granting of "extended voluntary departure" to El Salvadorans presently in the United States illegally.

As your letter points out, there have been occasions when the Attorney General, in consultation with the Secretary of State, has determined to delay temporarily expulsion of aliens of particular nationalities. Although somewhat of a misnomer, this form of discretionary relief from enforcement of our immigration laws most often has been referred to as "extended voluntary departure." Because of the serious foreign and domestic policy ramifications of withholding the expulsion of illegal aliens on nationality-based classifications, grants of such relief have been rare and limited to those cases where, in the judgment of the senior Executive Branch officials responsible for such policy, the best interests of the United States are served by such extraordinary measures.

It is true, as you further point out, that "extended voluntary departure" has been granted to nationals of Ethiopia, Nicaragua, Poland, and Uganda, at times when such countries were experiencing significant civil disturbances. It is inaccurate, however, to assume that there exists any specific criterion or criteria, such as the occurrence of violence or political instability, by which grants of "extended voluntary departure" are determined. As reflected in our immigration laws, it is an unfortunate reality that our country cannot provide sanctuary to all foreign nationals whose homelands are experiencing political or economic misfortune. The decisions made as to "extended voluntary departure" are reached on a situation by situation basis and are not readily susceptible to comparison or generalization. Each determination is based on examination of a variety of factors unique to each country's situation.

Because of our shared concern regarding the citizens of El Salvador, I requested new and additional advice of the Secretary of State on this matter. By a recent letter, Secretary Shultz has responded that in his judgment our present U.S. efforts to assist the Salvadoran people constitute the most constructive course of action in light of our foreign policy interests, and that the Department of State does not recommend that "extended voluntary departure" be granted to Salvadoran nationals in the United States.

In addition to the counsel provided by Secretary Shultz, I have carefully considered a number of other factors. As you know, it is estimated that there are hundreds of thousands of illegal Salvadoran aliens already in the United States. This is but one facet of the current crisis in which our country is experiencing a floodtide of illegal immigrants. A grant of "extended voluntary departure" to the Salvadorans undoubtedly would encourage the migration of many more such aliens. Because of the present and potential political and economic instability in other countries in close geographic proximity to the United States, any grants of conditional immigration benefits must be considered in light of its potential inducement to further influxes of illegal immigrants. Our recent experiences with the mass migrations of Cuban and Haitian nationals to the United States have underscored the need for proper concern in such matters for the finite capacity of our country's law enforcement and social support systems. It is also clear that, notwithstanding our improving economy, the continuing problems of unemployment and budget deficits can only be exacerbated by any action which would increase substantially the number of people competing for employment and social services.

I have also considered the fact that there are adequate alternatives by which the Salvadoran nationals may seek relief. For example, as you know, our immigration laws provide various specific procedures whereby aliens may lawfully secure the right to enter and remain in the United States, including application for asylum where there is a properly demonstrated claim of fear of individual persecution in the alien's homeland. This is not to suggest that grants of "extended voluntary departure" and asylum are based upon the same considerations and criteria; however, I do view it as significant that the provisions of the Immigration and Nationality Act contain numerous forms of relief for which aliens may apply to remain in the United States. Both the number of Salvadoran aliens and past experience suggest the possibility that many such aliens may seek to remain in the United States for economic improvement as well as the fact that many such aliens passed through third countries which would afford sanctuary were that the sole objective of the migrants. Thus, I believe it appropriate to address the Salvadorans' request for relief on an individual by individual basis, as is the normal course under our immigration laws.

Finally, as you know, the Department of State has made periodic reports on the conditions in El Salvador and has concluded that, while serious problems remain, the risk to the general citizenry from civil disturbance is not prevalent throughout the country and, in some areas, the risk has diminished.

Although it is my judgment under the present circumstances not to institute a discretionary grant of relief from enforcement of our immigration laws to all Salvadoran nationals now in the United States, I have attempted to convey the serious attention that has been given to the matters raised in your letter. Please be assured that we shall continue to monitor the situation carefully, and will make every effort to ensure the fair and humane administration of our immigration laws and policies with respect to the many Salvadoran and other aliens now in our country.

Sincerely,

William French Smith

William French Smith
Attorney General

THE SECRETARY OF STATE
WASHINGTON

JUN 23 [illegible] 3 53 PM '83

June 23, 1983

Dear Bill:

This is in response to your letter of June 13, 1983 concerning extended voluntary departure (EVD) for Salvadoran nationals in the United States. I, too, have received a letter from 89 members of the House of Representatives recommending that EVD status be granted to Salvadoran nationals in the United States, and I am aware of the sense of the Congress resolution and the pending litigation to which you refer.

The letter from the Congressmen and the litigation you have cited compare the level of civil disturbance and strife in El Salvador to those in other countries at times during which the Department of State recommended that EVD be granted for the nationals of those countries. However, such considerations in this or past cases can not be so readily generalized for comparative purposes. For example, it should be noted that civil strife is not prevalent throughout all regions of El Salvador. In any event, the extent of civil unrest alone does not determine the Department's view toward the granting of EVD to nationals of a particular country. The Department invariably considers a number of factors in deciding whether to recommend the granting of EVD in any particular case, and the granting of EVD may meet different objectives in different cases. Moreover, a recommendation to grant EVD in a particular case is but one of a number of possible responses that the Department may consider useful and appropriate.

The Department shares the humanitarian concerns of the 89 Congressmen and others about the continued civil strife in El Salvador. As you know, the Administration has taken a number of steps to help the Salvadoran people in their efforts to establish a democratic society in which the rights of all are recognized and protected. These include: bilateral and

The Honorable
William French Smith
Attorney General.

regional efforts (in which you personally have participated) to foster legal reform in El Salvador and several other nations in Central America; U.S. support of human rights initiatives, including creation of the Human Rights and Peace Commissions, and the recent amnesty; the medical assistance recently dispatched to El Salvador; and support of agrarian and other economic reforms. Through our efforts and those of others like the International Committee of the Red Cross, progress has been made in the taking and treatment of prisoners and the visitation of those detained, while, over the long term, violence outside of combat has been reduced. The Department believes that such measures, coupled with U.S. assistance and training programs in El Salvador, constitute a concerted political and humanitarian response to the situation in El Salvador, and that our present course of action is the most constructive in light of U.S. foreign policy interests with respect to El Salvador and other countries in the region.

In addition, based on past experience, the Department has concluded that a grant of EVD is, if not a magnet, at least an inducement to members of the beneficiary nationality to seek to enter the United States by any means, since they can avoid deportation. While, as you know, accurate statistics concerning illegal migration generally are not available, it is our best estimate that the 1979 grant of EVD to Nicaraguans was followed by a significant increase in illegal Nicaraguan entry into the United States. This phenomenon is, of course, facilitated by the proximity of Central America to the United States and the relative ease of travel to the U.S. from that area. We have examined this factor in light of our general understanding that for some years now Salvadorans have been migrating illegally to the United States, and in light of this Administration's strong commitment to deter illegal migration to the United States.

Because of the foregoing, the Department of State does not recommend at this time a grant of EVD to Salvadoran nationals in the United States. Please let me know if you require any further information.

Sincerely,

George P. Shultz

DEPARTMENT OF STATE'S VIEWS

Senator **Kennedy**. Thank you very much. We will hear from Mr. Walker.

Mr. **Walker**. Thank you, Mr. Chairman. Again, I apologize for not getting a statement over here as early as it should have been here. In the last couple of days, we have had a rather heavy rush of congressional testimony on Panama. We are having a couple of briefings and testimony today on this bill, as well as the somewhat unexpected visit of President Arias and some of the turmoil—you might have read it in the paper—about the situation with the diplomatic track in Central America. Maybe that accounts for part of the delay. I think we had the testimony ready last night and tried to get it over. I apologize.

As the Deputy Assistant Secretary for Central America, I would like to focus my comments on the political and the human rights situation in El Salvador. It is my firm contention that both continue to improve, fitfully perhaps, but steadily, and both in the right direction. President Jose Napoleon Duarte, himself deprived of elected office and physically mistreated in 1972, is a man clearly committed to peace, to democracy, and as you all know, to humanizing the conflict that his country has been enduring for the past half a dozen years or so.

His administration has made solid, hard-won gains in the human rights area, gains that we consider, unfortunately, all too often to have been ignored in the rush to condemn isolated and, I would say, steadily diminishing instances of abuse.

ACTIONS BY PRESIDENT DUARTE

I would note, for example, that President Duarte recently submitted a bill to the National Assembly which provides for an amnesty of all national security prisoners not directly involved in violent activities. If this passes, it will reduce the security cases from approximately 800 to around 200, and these latter 200 are all hardcore insurgent combatants and terrorists.

President Duarte's amnesty proposal will also provide freedom to hundreds of accused criminals who have already served significant time in pretrial detention. Considering El Salvador's already small prison population, which numbers about 4,000, we consider that this amnesty is a concrete step in the process of further improving the human rights situation in El Salvador.

This one example could be multiplied. We feel it is unfortunate that many refuse to acknowledge that the situation in El Salvador has improved and continues to improve. Many people insist that the Duarte government is unwilling or unable to curb human rights abuses, and that U.S. military and other assistance is prolonging the conflict and exacerbating the problems of that very troubled country.

HUMAN RIGHTS IMPROVING

We believe that the facts, supported by recent reports by the United Nations, by the Inter-American Human Rights Commission and other objective monitoring organizations, belie many of these distorted claims. These reports show that political conditions in El

Salvador have improved markedly since the universally recognized free and fair 1984 election of President Duarte.

We believe that U.S. economic and military assistance have helped to bring about some of these improvements. As you know, our embassy in El Salvador closely monitors the human rights situation. Our officers there are on the scene, and they are in daily contact with a broad spectrum of Salvadorans.

U.N. REPORT

The United Nations Special Rapporteur for Human Rights, in his 1986 report on El Salvador to the United Nations General Assembly, lauded the Salvadoran Government for "increasingly significant and commendable results in the crucial area of respect for the life of persons, both in non-combat situations and in or as a result of combat."

As the Special Rapporteur noted, there is a civil conflict going on in El Salvador. In such conflicts, unintended civilian casualties and human rights abuses are bound to occur. According to embassy reports, during 1986, 261 civilians died due to apparently political violence or in military actions. More than half of those deaths were attributable to guerrilla violence. Three out of four asylum applicants now claim that they are fleeing guerrilla, not government or death squad violence, according to the Department's asylum officers.

Abuses of authority by civil defense or security forces could be shown to be the cause of only 21 of the civilian deaths reported by the embassy in 1986. In most of these cases, perpetrators are being prosecuted.

Obviously, all is not perfect in El Salvador. Suffering and violence are bound to occur when a ruthless minority, however small, attempts to seize power through the barrel of a gun. Nevertheless, we wonder if El Salvador is not being held to some standard of performance, some ideal system of justice that is impossible for that country or almost any other country to live up to.

SHIFT IN CRITICISM OF EL SALVADOR

We have often been struck by the different kinds of criticism El Salvador has received over the years. In the early 1980s, we heard that El Salvador would never change, that the death squads would never be curbed without revolution. In 1984 and 1985, as death squad activity was increasingly brought under control, we were then told that the Salvadoran Air Force was conducting indiscriminate bombing campaigns throughout the country. As the Air Force tried to improve, and did improve its conduct, we then began to hear that political dissension was being stifled by arrests and that democracy and the rule of law could never be established until perpetrators of all past crimes had been tried.

In brief, no matter what El Salvador has done to improve its performance when subject to criticism in one area, there have always been new criticisms, new areas of concern that could be found to question the Duarte government's commitment to human rights and our policy of support for Salvadoran democracy.

In our opinion, the criticisms have changed over time because El Salvador itself has changed, and for the better. Have we tended to accentuate the positive? I think we have. That we would call positive feedback. El Salvador is our ally, and we are proud of what they have accomplished and what we have helped to accomplish in that country.

Have we obscured or evaded the negative? I would say we have not. We have always recognized that progress in El Salvador has been less than perfect, less than we would hope for, less than they would hope for, and we have always said that we must continue to work with Salvadoran Democrats, which I would insist is a growing group, to ensure future progress.

DEMOCRATS PROGRESS

A democratic center has taken hold in El Salvador. The extremes of left and right are being marginalized. The guerrillas, according to recent polls, have the support of only five or six percent of the population. The far right, source of much of the extralegal violence in the past, has also been discredited, and I would say defanged.

The government's firm stand against death squads has been effective. One no longer sees anything approaching the widespread violence of the early 1980s. Democracy is surely and slowly extending its roots in El Salvador. Special legislation by which subversives who are arrested has lapsed. All arrestees must now be turned over to judicial authorities within 72 hours. President Duarte has on three different occasions released wounded guerrilla prisoners to the Catholic Church, which in turn saw to their safe passage out of the country.

ELECTIONS SCHEDULED

Legislative elections were held in 1985 and are scheduled again for 1988. Presidential elections will be held in 1989. Unlike too many countries, the outcome of those 1989 elections cannot be predicted; i.e., it is a functioning democracy. The National University was reopened in 1984. Labor unions are free to organize and demonstrate, and they often do so against the government. Human rights groups, governmental and private, operate quite freely.

The International Committee of the Red Cross is well established, has access to prisoners, as well as other private groups that establish themselves in El Salvador.

To return briefly to the bill in question, let me add that all available evidence indicates that the vast majority of Salvadorans come to the United States for economic reasons, not from fear of human rights abuses in El Salvador. This motivation for immigration, legal or illegal, is shared by millions of others in developing countries around the world; I would add by millions of others in Central America. EVD could make the illegal route even more attractive for Salvadorans, many of whom have relatives here.

We have an asylum process, as the Commissioner noted, for those who can demonstrate legitimate fears of returning to El Salvador, to Nicaragua or wherever. Asylum is, of course, granted irrespective of whether the applicant fears violence from the far left or from the far right. All they have to do is demonstrate that that fear is legitimate.

For all of these reasons, the Administration, as you know, continues to oppose Senate Bill 332. As I mentioned earlier, Mr. Chairman, we submitted Deputy Assistant Secretary Holwill's earlier testimony to the House because it is a bit more extensive. It goes into a bit more detail, and it does cover the issue of the Nicaraguan side of the question.

Thank you very much, sir.

[The prepared statement of Mr. Holwill follows:]

PREPARED STATEMENT
OF
RICHARD N. HOLWILL
DEPUTY ASSISTANT SECRETARY FOR REGIONAL AFFAIRS
BUREAU OF INTER-AMERICAN AFFAIRS
DEPARTMENT OF STATE

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, REFUGEES
AND INTERNATIONAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
May 20, 1987

Mr. Chairman, you have asked the Department of State to comment on H. R. 618, a bill to provide for a General Accounting Office investigation and report on the conditions of displaced Salvadorans and Nicaraguans, to provide certain rules with respect to the report, and to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans.

I am happy to comment on the bill, from the Department of State's perspective, and will be pleased to answer any questions you may have regarding my statement and the situation in El Salvador and Nicaragua.

The Administration has consistently opposed legislation granting a temporary stay of deportation, known as extended voluntary departure, or simply EVD, to Salvadorans, Nicaraguans, or other nationals. A grant of EVD, as suspension of enforcement of the immigration laws against a particular group of individuals is essentially an exercise of prosecutorial discretion by the Attorney General. It is based on considerations of foreign and domestic policy as well as humanitarian considerations. All other issues aside, we would be opposed to action by the Congress that would essentially usurp the Executive Branch's prerogative with respect to when EVD should be granted. In addition, there is a very real concern that a grant of EVD will prompt significant additional unlawful immigration into the United States.

However, from the Department of State's perspective, I wish to focus my comments on the political and human rights situations in El Salvador and Nicaragua. Although the sponsors and supporters of this bill have clearly placed the emphasis on the conditions facing people deported to El Salvador, I would like to point out the vast differences between the two government's political situations. While the emphasis is on El Salvador, the situations in Nicaragua is far and away the most worrisome in terms of both political freedoms and abuse of human rights. Nicaraguan citizens are fleeing a country which is becoming ever more totalitarian in its treatment of its own citizens. Increasing numbers are leaving, or joining the democratic resistance, as the Sandinista regime, in betrayal of the revolution, tightens its grip, just as more than 1.2 million people have left Cuba because of a political system that represses and stifles its citizens. In a country with a population of just over three million people, the Sandinista government has imprisoned more than 15,000. Approximately 10,000 of these are political prisoners whose only crime was to have been members of the previous govenment or to have expressed their disagreement with the Sandinista government. The International Committee of the Red Cross and other monitoring organizations - in contravention of Nicaragua's international committments - are not permitted access to many of these prisoners.

Those fleeing Nicaragua are leaving a deteriorating situation. The Sandinistas are increasing repression through censorship, restrictions on political activities, harassment of the Church, and suspension of fundamental civil liberties. It is now illegal to leave Nicaragua without permission, and those who sought haven abroad are considered suspect upon their return. In fact the very restrictions imposed by the Sandinistas on their own people and upon outside organizations not openly sympathetic with their ideology would make it virtually impossible for the GAO to fulfill the reporting requirements of this bill as they relate to conditions in Nicaragua.

The political and human rights situation in El Salvador, on the other hand, continues to improve steadily. President Jose Napoleon Duarte, who himself was deprived of elected office, beaten and exiled by the military government in 1972, is a man committed to peace and democracy. His Administration recently submitted a bill to the elected National Assembly which provides for an amnesty of all national security prisoners not directly involved in violent activities. This will reduce the national security cases (accused guerrillas) from approximately 800 to around 200 hard-core guerrilla combatants and terrorists. President Duarte's amnesty proposal will also provide freedom to hundreds of accused criminals who have already served time in pretrial detention equal to that of their potential sentences. Considering El Salvador's population of approximately five million and the already small prison population of about 4,000 total, this amnesty is a dramatic step in the process of further improving the human rights situation in El Salvador.

This is but one recent example of the continually improving human rights situation under El Salvador's democratically-elected government. It is unfortunate that many supporters of this bill, steadfastly refuse to acknowledge that the situation has and continues to improve in El Salvador. They say that the Duarte Government is unwilling or unable to curb human rights abuses and that U.S. military assistance is prolonging the conflict and exacerbating the problems of that troubled country.

The facts - supported by recent reports by the United Nations, the Inter-American Human Rights Commission, and other objective monitoring organizations - belie those claims, showing instead that the political conditions in El Salvador have improved markedly since the 1984 election of President Duarte. We believe that U.S. economic and military assistance have helped to bring about these improvements. Our Embassy in El Salvador closely monitors the human rights situation. Our officers are on the scene, in contact with a broad spectrum of Salvadorans, daily.

The rule of law, imperfect as it is in El Salvador and other developing countries, is being reestablished in that country. Abuse of authority by civil defense or government forces is punished. During the past two years, more than 1,800 members of the public security forces (police) have been dismissed for infractions, including crimes against civilians and abuse of authority; at least 200 have been turned over to the courts for prosecution of crimes and human rights violations against the public.

The United Nations Special Rapporteur for Human Rights in El Salvador, in his 1986 report to the U.N. General Assembly, lauded the government for "increasingly significant and commendable results in the crucial area of respect for the life of persons both in non-combat situations and in or as a result of combat." As the Special Rapporteur has noted, there is a civil conflict going on in El Salvador. In such conflicts, which in this case continues due to the intransigence of the guerrillas and their political allies who are unwilling to submit themselves to the electorate, civilian casualties and human rights abuses are bound to occur. According to Embassy reports, during 1986, approximately 261 civilians died due to apparently political violence or in military actions; more than half of those deaths were attributable to guerrilla, not security force violence. Three out of four asylum applicants now claim they are fleeing guerrilla violence, according to the Department's asylum officers. Abuses of authority by civil defense or security forces accounted for only 21 of the civilian deaths reported by the Embassy in 1986 and in most of these cases, the perpetrators are being prosecuted.

Obviously, all is not perfect in El Salvador. There is a civil conflict going on, much more intense in some parts of the country than in others. The economy is in shambles, primarily because of the seven year-long guerrilla insurgency and the October 10, 1986 earthquake. However, both the combat situation and the general conditions in El Salvador, a constitutional democracy where freedom of expression is well established and where the political and human rights situations have improved vastly since EVD legislation was first introduced three years ago, do not support suspension of deportation for Salvadorans. The political situation has improved so much that the U.N. High Commissioner for Refugees (UNHCR) reports that more than 4,000 Salvadorans living in other Central American countries under UNHCR protection, including Nicaragua, have returned to El Salvador since 1983. Indeed, 4,500 Salvadoran refugees at the UNHCR camp at Mesa Grande, Honduras, asked for voluntary repatriation earlier this year.

Repeated surveys of the treatment and condition of deported Salvadorans by the Intergovernmental Commission on Migration and our Embassy in San Salvador have disclosed no evidence of persecution upon their return to El Salvador because of their status as deportees. While available information about the condition of Salvadoran returnees is limited due to the conflict conditions in some parts of the country and the unwillingness of some individuals to confide their status, we believe that Department of State efforts to study the situation of deportees, while imperfect, have been sufficient to form a basis for our conclusions. These imperfections and limitations, as noted by the GAO in its May 1987 study, would also limit the scope of any reports provided by the GAO in compliance with H.R. 618, were it to become law.

Although El Salvador has historically reported high levels of criminal violence, political violence has declined markedly and is generally confined to areas where the FMLN guerrillas operate most aggressively. There is no evidence that random violence resulting from the war is commonplace, although there is certainly danger in the few areas of the country which are heavily conflictive. The GAO's May 1987 study of the extent of problems experienced by returned Salvadorans indicated that only 25 percent of all deportees in the sample reside in Departments which contain heavily conflictive areas.

As you know, the economic situation throughout most of Latin America and the Caribbean has created a massive movement of people seeking to better their lives, just as our forefathers did. Approximately 67 percent of all Salvadorans would like to emigrate to the United States, according to 1985 Spanish International Network poll. This migratory movement has led to the current problem of millions of undocumented aliens from many lands who live in fear of detection and compete for jobs in a tight employment market. Problems which the Immigration Control and Reform Act was intended to address. Since the Act became law, the U.S. border patrol has reported a dramatic decline in Salvadorans attempting to illegally enter the U.S. The Salvadoran Government and the Archbishop of San Salvador Arturo Rivera y Damas have asked for special consideration for Salvadorans under the Act primarily because of the economic situation, not because of current political violence.

Virtually all available evidence indicates that the vast majority of Salvadorans are here for economic reasons. This evidence includes immigration trends to the U.S. and neighboring countries prior to the outbreak of violence; deportees' statements to independent interviewers as well as Embassy consular officers; and the failure to take advantage of refuges within El Salvador and in neighboring countries. In that motivation, they are joined by millions of others from developing countries around the world. Just as is the case with these nationalities, as more Salvadorans come to the U.S., they tend to attract relatives, further swelling the numbers of undocumented aliens. Approximately 90 percent of all recent asylum applicants stated they had relatives already in the United States. The limited number of immigrant visas available under the law (we issued more than 8,000 to Salvadorans last year) increases the incentive for family members to circumvent the law and come across the land border illegally. EVD could make the illegal immigration route even more attractive to Salvadorans yearning to find employment and reunite with undocumented family members, thus undermining the legal immigration process established by Congress.

With a three percent annual population growth rate, El Salvador has a population density unequalled in the Hemisphere. It is one of the most land-poor countries in the world. Prior to the outbreak of violence in 1979, at least 100,000 Salvadorans had already migrated illegally to the U.S. The 300,000 Salvadoran residents of Honduras, competing for land and jobs there, were a significant factor in the bloody 1969 "Soccer War." In 1979, the outbreak of civil warfare obviously had an effect on immigration patterns. Fighting in the areas of greatest guerrilla persistence caused people to leave their homes, although most of these displaced seem to have gone to refugee camps in neighboring countries and within El Salvador itself, where approximately 350,000 are in government and church-operated camps. Many fled to the capital city, where there is little violence and more opportunity, although, since the earthquake, increasing numbers are leaving the city and returning to their homes in areas secured from guerrilla depredation by the government. Salvadoran government policy and U.S. economic assistance encourages the return of displaced Salvadorans to the lands, in areas where the government can provide security and basic services.

Much of the blame for the current economic malaise in El Salvador can be laid directly at the feet of the FMLN/FDR insurgents who have undertaken a campaign of economic sabatoge, causing more than $1.5 billion in damage to the economy since 1979, approximately equal to all U.S. assistance during the same period. The FMLN's practices of indiscriminate use of anti-personnel land mines, assassinations and kidnappings to coerce the populace, and machinegunning of civilian vehicles contribute heavily to the dislocations of the conflict. Both the U.N. Special Rapporteur and El Salvador's Archbishop Rivera y Damas have strongly condemned both the economic destruction and the political violence of the FMLN/FDR.

Obviously, the way to improve the economic as well as the general situation is to bring the war to an end as soon as possible. However, the FMLN/FDR - which is supported materially and politically by some U.S. citizens, including members of the "sanctuary movement" - consistently and adamantly spurns all offers by President Duarte to incorporate them into the democratic political process. It is an unfortunate fact that supporters of the FMLN/FDR are only prolonging this vicious conflict, increasing the suffering of the Salvadoran people, and preventing the development of conditions which would encourage economic migrants to return to their native land.

All this is not to say that individual Salvadorans cannot and do not qualify for asylum in the United States, based on well-founded fears of persecution from either the extreme right or the insurgents. My colleagues from the Immigration and Naturalization Service have discussed Salvadoran asylum policy on numerous occasions, so I will not dwell on this issue. I would note, however, that the United Nations High Commissioner for Refugees has found that other countries do not have an especially high rate of approvals for Salvadoran asylum applicants. The UNHCR, during the period from February 1 to December 15, 1982, found that only 242 of the 3,694 Salvadorans who sought UNHCR help in Mexico could be recommended to the Mexican authorities for asylum status. This was during the height of the civil violence in El Salvador.

As you know, President Duarte recently asked President Reagan to grant EVD to Salvadorans because he fears that El Salvador cannot at present absorb the return of large numbers of Salvadorans from the United States as a result of the Immigration Reform and Control Act. The Administration gave President Duarte's request the most careful and sympathetic consideration, but ultimately concluded that it would be inappropriate to grant EVD to Salvadorans. We are deeply committed to the further strengthening of El Salvador's democratically elected government and to the development of the Salvadoran economy, and we will be deeply concerned if an unintended effect of the reform act is the destabilization of El Salvador's political or economic system. It is not yet clear, however, what those effects will be. We do not have accurate information, but we believe that large numbers of Salvadorans who are here illegally will be able to legalize their situation. In addition, INS has assured us that there will be no mass deportations as a result of the Act, both as a matter of policy and because of limited resources. In fiscal year 1986, for example, we understand that only about 4,000 Salvadorans were deported by INS. At the same time, from a domestic point of view, a grant of EVD to Salvadorans at this time would create a major exception to the Reform Act just at the time when it is beginning to be implemented. The Act is the most significant immigration legislation we have had since the Refugee Act of 1980, and there are important interests in ensuring that it is implemented effectively and fairly.

For all of these reasons, the Administration continues to be opposed to H.R. 618.

NOT DAMAGING REFUGEE ACT

Senator **KENNEDY**. Well, thank you very much, both of you. I have difficulty in accepting your assessment that this legislation is "emasculating" the Refugee Act. We are talking about extended voluntary departure which has nothing to do with that Act. It is a time-honored process which we have used repeatedly. I will include in the record the 16 different times that it has been applied over the last—well, it goes back to 1960.

[The information of Senator Kennedy follows:]

Extended Voluntary Departure

Country	Date Begun	Date Ended	Comments
Cuba	1960	1966	Congress passed law providing adjustment to LPR status.
Czechoslovakia	1968		From 1977-1981 extended voluntary departure granted in 1-year increments. Extensions of voluntary departure decided on case-by-case basis today.
Chile	Apr. 9, 1971	May 18, 1971	
Cambodia	1975	1977	Congress passed law providing adjustment to LPR status for Indochinese refugees.
Vietnam	Apr. 4, 1975	1977	"
Laos	Jul. 9, 1975	1977	"
Lebanon	Feb. 12, 1976		INS views requests "sympathetically" on a case-by-case basis.
Ethiopia	Jul. 12, 1977	Aug. 26, 1981	
	July 1982	Still in effect for those nationals who arrived prior to June 1980.	
Hungary	Dec. 30, 1977	Apr. 1981	From 12/30/77-April 1981 voluntary departure in 1-year increments. April 29, 1981 extensions of voluntary departure decided on case-by-case basis.
Rumania	Dec. 30, 1977	April 1981	From 12/30/77-April 1981 voluntary departure in 1-year increments. April 29, 1981 extensions of voluntary departure decided on case-by-case basis.
Uganda	Jun. 8, 1978	ENDED 1986 ~~Still in effect.~~	
Nicaragua	Jul. 3, 1979	Sept. 28, 1980	Case-by-case processing in effect today.

Extended Voluntary Departure (Continued)

Iran	1979	12/13/79	Case-by-case processing in effect today.
Afghanistan	1980	Still in effect.	
Poland	Dec. 23, 1981	Still in effect (6/30/83 expires).	
Silva Letterholders (Mainly Mexican nationals)	Aug. 1982	Still in effect (1/31/83 expires).*	

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* After the U.S. Senate overwhelmingly passed an immigration reform bill, the Justice Department granted extended voluntary departure to Silva letterholders (mainly Mexican nationals) on the likelihood that the House would pass a similar bill legalizing many undocumented aliens now in the United States, including all Silva cases. This action was unique in that it was the first time blanket extended voluntary departure was granted primarily for domestic policy considerations rather than a crisis in the foreign national's homeland; it was also the first time the Attorney General acted unilaterally without a specific recommendation from the Department of State.

Senator **Kennedy**. For the most part, I would say four-fifths of the cases, the date was eventually reached where there was no further need for extended voluntary departure. This has been a time-honored process and procedure, and one that has been respected both by Republicans and Democrats. It is even in place at the present time. You have extended voluntary departure for Afghans and Ethiopians. You do it even for many Poles.

There is no widespread civil war that I know of in Ethiopia. They have had forced relocations some time ago, and that has largely been stopped. You have serious conflict in Afghanistan, and despite the extraordinary efforts by Mr. Duarte, you still have it in El Salvador. I am a great admirer of him. I was very active in 1972, when he was deposed, in support of him down in Venezuela. I spent a lot of time with President Duarte and have a great admiration for him, and he is doing all the things that you have mentioned. I think we are very fortunate to have him in that position of responsibility.

CIVILIAN CASUALTIES

But you still have continued conflict. You have indiscriminate violence and civilian casualties. The Catholic Church and Americas Watch have figures very considerably higher than yours. I will make those a part of the record. They are somewhat below a thousand last year, 1986.

[The information of Senator Kennedy follows:]

Civil War in El Salvador—Number of Civilian Deaths, Army and Guerrillas

(From Catholic Church in El Salvador; verified by Americas Watch in U.S.)

1979 (estimates)	15,000
1980 (estimates)	15,000
1981	13,353
1982	5,406
1983	4,884
1984	1,556
1985	1,555
1986	975
Total (estimates)	([1])

[1] 57,000 plus.

WHY OPPOSE EVD AS USED BEFORE?

Senator **Kennedy**. We do not have that type of a conflict in some of these other countries—like Poland. That is what distinguishes them. I find it difficult to understand the opposition to granting extended voluntary departure. When the conflict ends, you end it. That is what has been done in a dozen different cases here in the past.

It seems to me that it is sufficiently justified in the case of El Salvador and Nicaragua. That is where we were before, and that is where we are now. There are men and women of good will who just have an honest difference on this issue.

Commissioner **Nelson**. Mr. Chairman, if I might comment briefly on that.

Senator **Kennedy**. Yes.

Commissioner **Nelson**. I think your last comment is appropriate. Just having recently testified before Congressman Moakley and previously for Congressman Mazzoli on the same issues, while we differ, I think it is the process working and honest differences. I appreciate that we are keeping it on that vein on the issue.

You did say the EVD is a time-honored process. Yes, it has been used in the past and continues to be, but I think the key issue is that it has been done administratively and not by legislative mandate. I think since it is an extra statutory process to be used on a specialized basis that it ought to be utilized as it has been on an administrative basis. To mandate it by statute, we think, creates a dangerous precedent and can lock it in.

So I think that is one issue, aside from whether it ought to be utilized at all. While this Administration has utilized it, it certainly has tempered its use a great deal because we do believe in the Refugee Act itself—which, again, came in 1980 and followed a lot of the problems that had come from earlier special interest EVD type of procedures. So with that Act and the Immigration Act, the basic remedies are to deal with the immigration and refugee issues effectively, so EVD should be, first of all, administrative, and second of all, properly should be used on a very discreet basis. And we think we have been doing it.

This Administration, I believe, if I am correct, has only initiated EVD for Poland. It continued it for Afghanistan and several other countries and, as indicated recently, did terminate it for Uganda.

RECOMMENDATIONS IN 1981

Senator KENNEDY. Well, I will put in the record my recommendation that the Administration do it in 1981. It has taken us 6 or 7 years to get to the point legislatively because the Administration refused to extend it administratively. At that time you were up to more than 13,000 civilian casualties a year. But the Administration was not willing to move, and it has just taken a very long period of time to be able to address it legislatively.

Many of us who have followed the EVD process and procedure recommended to the Administration that they move forward in 1981. It was the decision at that time by Secretary Haig not to do it. I will include in the record the exchange of letters going back with Secretary Haig and his response as part of the record.

[The information of Senator Kennedy follows:]

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Senate

U.S. TREATMENT OF SALVADORAN REFUGEES

Mr. KENNEDY. Mr. President, I have been concerned for many weeks over the growing problem of refugees fleeing the escalating conflict in El Salvador—those in and around El Salvador as well as those Salvadorans in the United States or reaching our borders.

Through the United Nations High Commissioner for Refugees, we are joining others in the international community in providing humanitarian assistance to Salvadorans in Honduras and other countries.

But for those Salvadorans in the United States, or reaching our shores, we have closed our doors to those who do not want to return to their country at this time because of the violence. Regrettably, this is being done by the administration contrary to past practice.

During the worst days of the Lebanese or Nicaraguan conflicts, we adopted for a temporary period of time a number of special immigration measures to deal with nationals from those countries who were in the United States or those seeking safe haven.

Basically, these measures involved the granting of stays of voluntary departure for Lebanese and Nicaraguans—with permission to work, if that was necessary—and adopting more flexible visa guidelines for the admission of those who had family or other ties in the United States.

It also meant we did not deport such nationals whose life might be endangered upon return to their countries because of civil strife.

At a hearing of the Subcommittee on Immigration and Refugee Policy on April 1, and in subsequent letters to Secretary of State Alexander Haig and Acting Immigration Commissioner David Crosland, I raised the issue of our treatment of Salvadoran refugees.

I deeply regret that the responses I have received are negative, and that the administration has rejected granting stays of voluntary departure to Salvadorans who do not want to seek permanent asylum, but simply temporary safe haven from the violence in El Salvador.

I hope that the administration will reconsider its decision, proceed on the basis of past precedents, and deal more flexibly and humanely with Salvadorans in the United States.

Mr. President, I ask that my exchange of correspondence with the Department of State and the Immigration and Naturalization Service be printed at this point in the RECORD.

The correspondence follows:

COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 6, 1981.

Hon. ALEXANDER M. HAIG, Jr.,
Secretary of State,
Washington, D.C.

DEAR AL: As you know, during the worst days of the Lebanese and Nicaraguan conflicts, the United States temporarily adopted a number of special immigration measures to deal with nationals from those countries who were in the United States on non-immigrant visas or outside seeking to visit or find temporary safe-haven here.

Basically, these measures involved the granting of stays of voluntary departure for Lebanese or Nicaraguans—with permission for them to work, if that was necessary under the circumstances—and adopting more flexible visa guidelines for those who had family or other ties in the United States. These special immigration measures helped countless hundreds of families, giving them safe-haven from the violence and conflict within their own countries.

At a hearing of the Subcommittee on Immigration and Refugee Policy last week, I raised this issue with the Acting Commissioner of the Immigration and Naturalization Service relative to El Salvadorans. I was particularly concerned over reports of large-scale deportations of Salvadorans. Given the escalating violence in El Salvador, I believe we must be vigilant that we are not unnecessarily endangering the lives of Salvadorans who understandably do not want to return to their country at this time.

Considering we adopted special immigration measures for the Lebanese in 1975–76, and for Nicaraguans two years ago, why has the Department of State failed to propose such action now relative to Salvadorans? Clearly, the Immigration Service must await a formal recommendation from the Department of State prior to initiating a policy of automatically granting stays of voluntary departure.

I have asked the Immigration and Naturalization Service to provide the Subcommittee with detailed information on the processing and deportation of Salvadorans, especially since January. In the meantime, I would appreciate receiving your views on this issue, and whether the Department is prepared to recommend to INS special immigration measures for Salvadorans in the United States or at our borders.

Sincerely,

EDWARD M. KENNEDY,
Ranking Minority Member, Subcommittee on Immigration and Refugee Policy.

DEPARTMENT OF STATE,
Washington, D.C., April 17, 1981.

Hon. EDWARD M. KENNEDY,
U.S. Senate

DEAR SENATOR KENNEDY: I am replying to your letter of April 6, to the Secretary requesting that the Department of State recommend to the Immigration and Naturalization Service (INS) that Salvadorans in the United States be granted voluntary departure status in lieu of forcible repatriation to El Salvador and work authorization and a more flexible visa policy for those who have relatives in the United States.

Under the United Nations Protocol Relating to the Status of Refugees, the United States is prohibited from undertaking the forced expulsion movement of a refugee to a country or frontier where persecution is likely to occur. In addition, the Refugee Act of 1980 obliges the granting of asylum status to those who establish a well-founded fear of persecution upon return to their country of nationality for reason of race, religion, nationality, membership of a particular social group, or political opinion. The responsibility for establishing a well-founded fear of persecution rests with each applicant. The INS does not classify Salvadorans in the United States as refugees unless they individually establish that their fear of being persecuted is a well-founded one.

While questions regarding exclusion or deportation proceedings are, of course, under the jurisdiction of the INS, the Immigration Service has informed us that no Salvadoran asylum seeker is sent back until a determination has been made that the claimant has not established a well-founded fear of persecution. It is not necessary for Salvadorans to "formally" request asylum. If a positive indication of unwillingness to return to El Salvador is made, and if the unwillingness is based on a fear of being persecuted, that is sufficient to have the case processed through asylum procedures.

Due to the so-called "final offensive" last January by the Farabundo Marti National Liberation Front, the Department believed it prudent to ask the INS to suspend action for 90 days on Salvadoran asylum requests. This 90-day period lapses April 15 at which time the Department intends to resume review of Salvadoran asylum requests. For those who establish a well-founded fear of persecution upon return to El Salvador the Department, in its advisory opinion, will so inform the appropriate INS District Office.

While civil strife and violence in El Salvador continue at distressing levels, conditions there do not, at present, warrant the granting of blanket voluntary departure to Salvadorans in the United States.

While fighting in some areas has been severe, El Salvador has not suffered the same level of wide-spread fighting, destruction and breakdown of public services and order as did for example, Nicaragua, Lebanon or Uganda at the time when voluntary departure was recommended by the Department and granted by INS for nationals of those countries.

Public order and public services, while under a serious attack, are still maintained, especially in San Salvador and the larger cities.

Moreover, Salvadorans now present in the U.S., whose number may be as high as 500,000, who were not involved in political or military activities before their departure, would not face, upon return, any more danger than is faced by their compatriots who never left the country.

We believe that the majority of Salvadorans in the United States did not depart their country solely to seek safehaven in this country. Most traveled through third countries before entering the United States and many of them entered quite some time ago. Other countries closer to El Salvador, Honduras for example, have been generous in offering safehaven to Salvadorans who have fled.

Thus, it is not true that only the United States is a possible refuge. The Department, therefore, at this time, is not in a position to recommend to the INS the blanket granting of voluntary departure status or work authorization for Salvadorans presently in the U.S.

Similar considerations apply to the question of non-immigrant visas for Salvadorans outside our borders. As you know, the Immigration and Nationality Act provides that visa applicants must be considered to be intended immigrants until they establish that they qualify for one of the non-immigrant classifications.

Visitors establish eligibility by demonstrating economic, family, or social ties to their homelands which would induce them to depart voluntarily after a visit to the United States.

The extraordinary circumstances existing in such nations as Lebanon and Nicarauga, to which visa applicants would obviously not wish to return until circumstances returned to normal, would prevent persons who would otherwise be well qualified, from obtaining visas.

In these circumstances, we advised consular officers to take a "long-term view" of the applicants' ties to their homelands, those attachments which would induce them to return abroad when circumstances returned to normal. This policy obviously cannot assist an applicant who would not qualify for a visitor's visa under any circumstances.

As previously noted, we do not believe that the circumstances in El Salvador reach the same levels as existed in Lebanon or Nicaragua. Furthermore, we are not aware that there are Salvadoran visa applicants who in normal times could expect to receive visas who are now being denied because the current situation created questions about their intentions as tourists.

We will, of course, continue to assess Salvadoran developments closely and will inform the INS should these developments dictate a change in our position regarding voluntary departure status for Salvadorans.

Sincerely,

ALVIN PAUL DRISCHLER,
Acting Assistant Secretary for Congressional Relations.

COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 6, 1981.

Hon. DAVID CROSLAND
Acting Commissioner, Immigration and Naturalization Service, Department of Justice, Washington, D.C.

DEAR MR. CROSLAND: To follow-up our discussion at last week's hearing of the Subcommittee on Immigration and Refugee Policy relative to special immigration measures for El Salvadorans in the United States, I have written the attached letter to Secretary of State Alexander Haig.

I appreciate that INS must receive a recommendation from the Department of State prior to establishing a policy of granting stays of voluntary departure for Salvadorans who do not wish to return to their country at this time because of the escalating civil strife. However, I am hopeful the Department will soon make such a recommendation, for I believe it is clearly warranted.

Again, I appreciated your testimony before the Subcommittee and I look forward to receiving whatever INS statistics you have on the recent processing and/or deportation of El Salvadoran nationals.

Many thanks for your consideration, and best wishes.

Sincerely,

EDWARD M. KENNEDY,
Ranking Minority Member, Subcommittee on Immigration and Refugee Policy.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., May 1, 1981.

Hon. EDWARD M. KENNEDY,
Ranking Minority Member, Subcommittee on Immigration and Refugee Policy, Washington, D.C.

DEAR SENATOR KENNEDY: In response to your letter of April 6, 1981, requesting whatever statistics we have on recent deporta- information is available at this time: For the tion of El Salvadoran nationals, the following year October 1979 through September 1980, 8,868 Salvadorans were expelled. Since October 1980 the following expulsions have taken place, including voluntary repatriation and deportation: October 1980, 825, November 1980, 776, December 1980, 721, January 1981, 394. The statistics are not yet available for February and March.

During your questioning in the hearing ou referred to previous instances in which lanket periods of voluntary departure were ranted. I have enclosed, for your informaion, a summary of those instances, beginning with Ethiopia in May 1977.

We have received word from the Departent of State that it is not in a position to ecommend a blanket granting of voluntary eparture for illegal Salvadorans presently in he United States. However, on April 15, 1981, he Department resumed a case by case reiew of Salvadoran political asylum reuests. For those who can establish a well ounded fear of persecution upon return to l Salvador, State will inform the appropriate Immigration and Naturalization Service istrict office.

I appreciate your interest in this matter et me know if you wish additional information.

Sincerely,

DAVID CROSLAND,
Acting Commissioner.

ENCLOSURES

Aliens from the following countries have en granted blanket periods of voluntary parture.

Ethiopia—May 1977 to present.
Uganda—April 1978 to present.
Iran—April 1979 to November 1980.
Nicaragua—June 1979 to September 1980.

Similarities:

1. All grants were based upon Department of State recommendations.

2. Department of State was not recommending that any of the involved nationalities be considered as a refugee within the meaning of 203(a)(7). Ugandan and Nicaraguan aliens were ineligible for consideration under 203(a)(7), as stated by Ms. P Derian in a letter to Commissioner Castillo concerning Ethiopians and Ugandans dated April 7, 1978. "Since Refugees from many countries, including Uganda, are ineligible for refugee status under the proviso to Section 203(a)(7) of the Immigration and Nationality Act (INA) due to geographic criteria imposed by that section, many refugees in the U.S. can only be placed in voluntary departure status." The Iranian and Ethiopians were apparently found ineligible by Department of State for reasons other than the geographic criteria.

3. All initial recommendations were made by the Department of State prior to the Refugee Act of 1980.

Differences: Ethiopians and Ugandans were granted voluntary departure in one year increments.

Nicaraguans and Iranians were granted voluntary departure to specified dates as recommended by Department of State.

LEBANON

Based upon Department of State opinions a policy wire dated July 1, 1976 (attached) was issued stating that Lebanese nationals' requests for extensions of voluntary departure should be viewed sympathetically on a case by case basis (not a blanket grant of voluntary departure).

ETHIOPIA

Per request of Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs (letter dated May 1977), a policy wire, dated July 12, 1977 (attached) was issued stating that voluntary departure would be granted to Ethiopian nationals in one year increments.

On July 18, 1980, Victor H. Palmieri, United States Coordinator for Refugee Affairs wrote to Commissioner Crosland and requested that INS continue to defer deportation of Ethiopians. There has been no change in policy.

UGANDA

Per request contained in Ms. Derian's letter of April 7, 1978 concerning both Ugandans and Ethiopians, a policy memorandum, dated June 8, 1978 (attached) was issued stating that Ugandan Nationals would be granted voluntary departure in one year increments.

In a letter dated June 22, 1979, Ms. Derian advised INS that conditions were too unsettled in Uganda to warrant a change of policy.

IRAN

In a letter to Mr. Michael Egan, Associate Attorney General, dated March 19, 1979, Mr. David Newsom, Under Secretary for Political Affairs, Department of State, requested that Iranians not be forced to return to Iran.

Mr. Egan responded to Mr. Newsom on April 11, 1979 and stated that departure would not be enforced until September 1, 1979.

On April 16, 1979, a policy wire (attached) was issued stating that Iranians would be granted voluntary departure until September 1, 1979. July 20, 1979 a policy wire (attached) was issued clarifying the policy regarding employment authorization. On July 28, 1979, Mr. Newsom wrote to Mr. Egan requesting an extension of the voluntary departure period to March 1, 1980.

Mr. Egan responded to Mr. Newsom on August 2, 1979 advising him that Iranians would be extended until June 1, 1980.

On August 9, 1979, a policy wire (attached) was issued extending the date to June 1, 1980. Clarification wires (attac[illegible] were issued on August 10, 1979 and [illegible]ember 20, 1979. On November 23, 1979, a policy wire (attached) was issued concerning the revocation of the voluntary departure period previously granted.

NICARAGUA

In a letter to Commissioner Castillo dated June 26, 1979, Mr. Warren Christopher, Acting Secretary, Department of State, requested that INS place Nicaraguan nationals in a voluntary departure status until December 31, 1979

A policy wire (attached) dated July 3, 1979 stated that, for Nicaraguans in the U.S. as of June 27, 1979, voluntary departure should be granted until December 31, 1979.

Mr. Christopher requested, in a letter to the Commissioner dated August 17, 1979, that the policy not be limited to Nicaraguans who were in the U.S. as of June 27, 1979. A policy wire (attached) to this effect was issued on August 29, 1979. Mr. Christopher wrote again on January 4, 1980 and on June 27, 1980 requesting extensions of voluntary departure to June 30, 1980 and September 28, 1980, respectively. Policy wires (attached) were issued to that effect on January 4, 1980, January 8, 1980; and July 1, 1980. Mr. Christopher wrote on October 1, 1980 that further extensions of voluntary departur was not necessary.

A policy wire (attached) was issued on October 16, 1980 stating that Nicaraguan requests for voluntary departure would b handled on a case by case basis (no long a blanket grant of voluntary departure).

Senator Kennedy. The Senator from Wyoming, my good friend who has very firm views about this particular question is here. All of us admire the extraordinary work that he does in the areas of immigration and refugees. We always value highly his comments and views.

The Senator from Wyoming.

Senator Simpson. Mr. Chairman, those who speak of tenacity and perseverance, it takes one to know one.

REQUEST FOR HEARING

I want to thank you very much personally for your accommodation of my request for a hearing; Senator DeConcini too. I appreciate that very much. I realize that was more of a personal meeting of a request of mine than anything else. That is a trait of yours that I deeply appreciate, and I always tried to reciprocate when I was in that post. I thank you very much.

RECENT EVENTS AND CONSIDERATIONS

We will conclude the effort today with hearings, and we will conclude our effort with the bill shortly. I have certain amendments to propose with no attempt to filibuster, nothing more than that I want to present the case and see where we go. But some new events, I think, have occurred since the last hearing in April of 1985. That is, that all reports show an improvement. I think we all can admit that there has been an improvement in Salvadoran human rights conditions.

Then, Mr. Chairman, the thing that was puzzling to me was President Duarte requesting EVD for economic reasons. That was the quote, "economic reasons," which in my mind would set an absolutely bizarre precedent if we were to grant such a request. Let me tell you, we were awfully close to it.

If you are going to do that, then you had better be ready to do that for Haiti and the Dominican Republic and any country that has economic difficulty.

There are many other countries on Earth who could ask for EVD on that basis, and I think that would be a true distortion. I hope we will not pursue that. EVD for refugees, yes, but for economic migrants, no. It cannot work. It is distortion, it is bizarre. It is the gimmickry that Mr. Walker speaks of.

You back certain groups into the left field bull pen, and they will come up with something else. I found that the whole time of the bill. We tried to accommodate various interests and do so, and they just became more novel and innovative and creative and came up with something else.

So I think that it still flies in the face of the spirit of the Refugee Act, where we did not want to get country-specific. I really feel that it endangers public support for a generous U.S. refugee program.

I just do not see, Mr. Chairman, how conditions in El Salvador now, any more than in April of 1985, even more so now, would warrant a blanket immigration remedy, and that is what this is to the nationals of its country here in the U.S. Those policies would still differ distinctly if this legislation were enacted.

EVD NOT TEMPORARY

Well, I would ask, Mr. Chairman, we always talk about these things being temporary, but they are never temporary. The example is this morning, and I would ask unanimous consent that an article in the Washington Post this morning with regard to Poland be entered into the record.

[Article follows:]

WASHINGTON POST, JUNE 18, 1987 P. A21

Federal Agencies Polarized By Move to Deport Poles

By Mary Thornton
Washington Post Staff Writer

The State Department has recommended that the Justice Department end the special immigration status of 7,000 to 10,000 Polish nationals who have lived in this country since Poland declared martial law in late 1981.

If the controversial recommendation is adopted, those Polish nationals without valid current visas could be expelled from the country starting July 1.

The department's recommendation, which is coming under sharp attack in the U.S. Polish community, reflects the growing normalization of relations between the United States and Poland, sources said.

Al Nazewski, president of the Polish American Congress, said in an interview, "The State Department is so naive to think the Polish communist government will be fair to them when they return—when they don't have an apartment and they don't have a job and they don't have stamps for food.

"There are many who have had children in this country who are American citizens. It's inhuman and cruel," he said. "You just can't cut off people like this . . . . They've got a taste of freedom now."

The recommendation comes after a Feb. 23 decision by Secretary of State George P. Shultz to lift economic sanctions against Poland. There has also been talk recently between the United States and Poland of again exchanging ambassadors. Polish government spokesman Jerzy Urban said Tuesday in Warsaw that an agreement has been reached to exchange ambassadors, but the State Department said no formal agreement has been reached.

Diplomatic relations between the two countries were downgraded in December 1981 after martial law was imposed to curb labor unrest, Solidarity union leader Lech Walesa was arrested, and Romuald Spasowski, the Polish ambassador to the United States, defected.

Since then, the U.S. government has suspended any deportation of Polish nationals, whether or not they have valid visas.

Several administration sources said yesterday that there is considerable opposition to the State Department proposal from officials who think that any effort to deport the Polish nationals would be unfair and politically unwise.

"The State Department can say whatever they want. We will make the final decision," said one Justice Department source who said Attorney General Edwin Meese III feels very strongly that the Poles should not be deported. An administration official added that it would look "bizarre" for an anticommunist administration to "start deporting people back to a communist country."

Senator **Simpson**. The language is clear. We are saying that there is this possibility of sending back—it says "expelled"—to Poland these people who are here because things have changed a bit in Poland. That is an item of contention and discussion, I am sure, but the interesting phrase is that "There are many who have had children in this country who are American citizens. It is inhuman and cruel. You just cannot cut off people like this. They have got a taste of freedom now." That will be the comment that will be made in every situation of anyone who is here on EVD, and I think that is very, very important.

Of the 16 different times that EVD has been granted, a large number have led to permanent status for the EVD beneficiaries. I think that proves one of my points that temporary safe haven policies—and I understand there is a whole safe haven bill now moving or being presented in the House—almost always lead to permanent populations.

I have not the slightest wish to deny anyone access to this country who meets the definition of refugee, not one whit. If we do not like the definition of refugee, we could change it. It was Senator Kennedy that worked so diligently to get it done in 1980, while I was just an observer.

So I want to get that very clear in this measure, in asylee cases, case-by-case, you bet; proceed with them. So, Mr. Chairman, I do thank you very much, and I am most appreciative of your doing this.

Senator **Kennedy**. Thank you very much, Senator Simpson.

STATEMENT BY SENATOR DeCONCINI

Senator **DeConcini**. Mr. Chairman, let me first thank you for letting me join your Committee today and for your support and leadership on this legislation.

Today's hearings, as we know, are being held at the request of Senator Simpson. There is no Senator I hold in greater esteem than Senator Simpson, and I, indeed, concur that he extended himself when he was Chairman of this Committee and any other time I have ever worked with him. I thank you, Alan, for that as a colleague and someone that is deeply committed to making the system work.

I appreciate the willingness for us to have these hearings in an orderly manner, to hear the discussion and the concern that Senator Simpson has raised on the economic feasibility and reasons, if they are the reasons—they are not for me, but indeed, I think it is fair to do that—and the Senator's agreement to move forward with a process in the legislation and the Committee.

I know that Senator Simpson is concerned about the letter that we received and the Administration received from President Duarte to President Reagan. President Duarte urged President Reagan to support the bill for economic reasons. He wrote that the return of hundreds of thousands of Salvadorans from the United States to El Salvador would have a devastating effect on the economy of his country. That was clear in the letter.

While I believe that the time for passage of this bill is long overdue, and although I have never argued for the bill on economic grounds, I was happy the Committee was able to address the issues brought up in this particular letter. It is important that we address the concern that Senator Simpson has now voiced, that what we are doing here is on economic grounds or on the reasons, or whether there are reasons to grant EVD. I think there are other reasons, notwithstanding the letter from President Duarte, and the reasons still exist as they have for some period of time.

El Salvador has been torn apart by civil war that has ravaged its people and its land. I have long supported President Reagan's efforts in El Salvador, both with economic and military support. However, I believe that because of our involvement in that country, we owe those Salvadorans who have been displaced by the violence and strife and war the opportunity to temporarily stay here until it is safe to go home.

I want to stress that this would be a temporary stay. Although El Salvador is still a volatile country, I am pleased that the situation is slowly improving. I received a letter from Arturo Rivera Damas, who is the Archbishop of metropolitan San Salvador. He wrote that there has been a perceivable reduction of human rights abuses. This reduction has taken place in spite of adverse factors such as the earthquake of last year, the still lingering war, and the very shaky economic cited by President Duarte.

Archbishop Damas believes that the massive return of the so-called illegal Salvadorans would threaten, if not destroy, all that has been achieved in that country in the past several years. He supports this legislation not on the economic principles, but on the reasons EVD has been granted to many other countries such as Ethiopia, Nicaragua, to Afghanistan, Poland and many other countries.

These improvements are a good sign, Mr. Chairman; however, the violent conditions still existed as of 1986. There still were death squads, killings, targeted assassination, and sudden disappearances of citizens. Incidents like these have resulted in over one million displaced Salvadorans. I believe that most Salvadorans want to return to their country when it is safe. I believe the passage of this legislation will facilitate the return process.

In addition to having never argued for this bill for economic reasons, I have also never claimed that EVD should be granted because of the fate of the returnees. We should stop the deportation because of El Salvadorans' generalized climate of violence and destructions and because of our responsibility to those individuals who are displaced because of our involvement in the civil war and our commitment to the Duarte regime.

I will be pleased to hear the testimony this morning, Mr. Chairman, and thank you again for letting me be part of these hearings.

Senator KENNEDY. Thank you very much. Al, do you have anything else?

Senator SIMPSON. Just one question, Mr. Chairman, of the INS. Is it appropriate for questions now, Mr. Chairman?

Senator KENNEDY. Yes.

HISTORY OF APPREHENSIONS OF SALVADORANS

Senator **Simpson**. What has been the history of INS apprehensions of Salvadorans on our southern border? I think that is important to have in the record. And what was the number of Salvadoran apprehensions before the civil conflict escalated in 1980?

Commissioner **Nelson**. I do not have the exact figures, Senator Simpson, but I can give you the trends. The percentages of Salvadorans coming in and being apprehended illegally have been ranging between three and five percent over the last number of years, up and down.

It is sort of interesting. In 1982, apparently one of the most violent years, the percentage was actually quite a bit lower in that range than it had been. So our belief is that, again, it points out that it is the economic conditions that have caused Salvadorans traditionally to come to this country, and that continues. The numbers have not changed in percentages that much, and we think that is an indication that, again, it just has not been the humanitarian concerns that have been alleged. It clearly has been an economic basis. We can get you the exact figures for the record.

Senator **Simpson**. If you would, please.

Commissioner **Nelson**. We will do so.

[The aforementioned was subsequently supplied for the record:]

The total number of deportable aliens from El Salvador apprehended in Fiscal Year 1986 was 20,604. (Approximately 85% of these were apprehensions at the border; the remainder were internal apprehensions by investigation.) This figure constitutes 1.16 percent of the total U.S. apprehensions for that time period, which is the lowest percentage for El Salvador since before the civil conflict escalated in 1980. The percentage of Salvadorans being apprehended has ranged, up and down, between 1.06% and 1.63% over the past 8 years.

"EXCLUDABILITY" UNDER LEGISLATION

Senator **Simpson**. One other question. This bill forbids both detention and deportation of Salvadorans who are protected by the bill, while a "brief interrogation" is permitted. That does not seem to me to be sufficient to determine whether a Salvadoran might be excludable, for example, on other grounds—for instance, criminal grounds.

Would this bill permit the INS to detain those who it has reason to believe are excludable on some of the grounds permitted in this bill?

Commissioner **Nelson**. We do not think so. I guess one of the problems, while the bill might want to allow you to detain them for possible criminal activity and that, I think the way it is worded that it would be very confusing and very difficult. It could lead to allegations of false arrest and all that. So as a practical matter, if this bill became law, it probably would be just about impossible to detain and deport any Salvadorans absent a few very extreme cases.

Senator **Simpson**. So if we were to deal with this bill, and if it were to pass, we would want to insert some clarifying language there. Would that not be the case?

Commissioner **Nelson**. Well, the answer is yes. Although as I testified a week ago before Congressman Moakley's Committee and they asked, well, are there changes that I want, I know Senator

DeConcini obviously means well, and as we stated before you came in, I think while there is a difference of opinion that has been on the issues, this is a concept that just does not have merit. You cannot improve it by changing it.

I really do not think that it is subject to change. It is just a concept and bill that should not become law.

DO BENEFICIARIES NEED LEGISLATION

Senator SIMPSON. Mr. Chairman, if I might ask one question of Mr. Walker, and then I will conclude.

In the letter that President Duarte wrote to President Reagan, asking that those presently in the U.S. in illegal immigration status be allowed to remain, his letter also noted that Salvadorans need not fear political violence in El Salvador. But it did note that their economic remittances, what they send home to El Salvador, is an important supplement to the Salvadoran economy.

Is that not persuasive evidence that most of the people who would be the beneficiaries under S. 332 do really not warrant the relief provided in this bill based upon "conditions in El Salvador"?

Mr. WALKER. I do agree with you, Senator. I think you have to understand the circumstances that were in place when President Duarte wrote that letter to President Reagan. There had been great publicity given to the new immigration law in the press which was going to turn many, many millions of people in the United States fearful of losing their jobs and this sort of thing and make them all flee across our southern border and head for home.

In Salvador, in Guatemala, in Nicaragua, in all the countries that I deal with in Central America, there was great fear that most of the illegals that were up in the United States who had not been here prior to the date determined by the bill would be returning home. President Duarte mentioned a figure of hundreds of thousands of Salvadorans illegally in the United States.

We do not think that fear has been realized. We think that initial panic passed. We have talked to the Salvadoran Embassy here and asked them how many people are coming in to get documents to return to El Salvador, and the numbers are much, much smaller than what were anticipated.

I think if President Duarte were here and if you asked him were the conditions in his country in terms of political violence, in terms of human rights observance, adequate to permit people to return unmolested, he would say adamantly yes, they were. I think his argument is for the economic relief rather than for relief from the possibility of violence when people return. So I agree completely with your point, Senator.

Senator SIMPSON. Thank you, Mr. Chairman. I have some further questions. I would like to submit those in writing, Mr. Chairman.

Mr. WALKER. Could I add just one footnote to my answer, sir? I served in Salvador in the mid-1970s when the violence was getting started. Back in that time, 1974 to 1977, I had any number of conversations at their foreign office with government officials who said that, frankly, their number one foreign policy was the excess population, the pressures of population.

Over the last 20, 30 years, the fact that El Salvador is a very, very small country with very limited arable land and just too many people has produced an outflow of population: people seeking economic opportunity beyond the borders. That was the principal cause of the war in 1969 with Honduras. They had problems with Nicaragua, people going into Nicaragua thinking they could find land to work, could find economic opportunity.

There are populations of exiled Salvadorans in Guatemala, in Belize. If you go to Belize today, go into restaurants, much as you find in Washington you would find illegal Salvadorans seeking economic opportunity beyond the borders of El Salvador. Those people leave; they tend not to go back. So I agree totally with your words, Mr. Senator, that although this might be intended to be a temporary measure, temporary relief, the vast majority of Salvadorans that leave El Salvador seeking economic opportunity beyond the borders do not want to go back. I think that is obviously amplified when they have come to the United States and found out what is available on the economic side here.

That is my footnote. Thank you.

Senator SIMPSON. I thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much, gentlemen.

Senator DECONCINI. I have no questions now. I will submit some.

Senator KENNEDY. Fine.

[Prepared statement follows:]

ORAL STATEMENT
OF
WILLIAM G. WALKER
DEPUTY ASSISTANT SECRETARY FOR CENTRAL AMERICA
BUREAU OF INTER-AMERICAN AFFAIRS
DEPARTMENT OF STATE

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
June 18, 1987

MR. CHAIRMAN, YOU HAVE ASKED THE DEPARTMENT TO COMMENT ON SENATE BILL 332, WHICH WOULD PROVIDE FOR A GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT ON THE CONDITIONS OF DISPLACED SALVADORANS, PROVIDE CERTAIN RULES OF THE HOUSE OF REPRESENTATIVES AND OF THE SENATE WITH RESPECT TO REVIEW OF THE REPORT, AND PROVIDE FOR THE TEMPORARY STAY OF DETENTION AND DEPORTATION OF CERTAIN SALVADORANS.

I AM PLEASED TO COMMENT ON THE BILL, FROM THE DEPARTMENT OF STATE'S VIEWPOINT, AND WILL ANSWER ANY QUESTIONS YOU MAY HAVE REGARDING THE SITUATION IN EL SALVADOR.

THE ADMINISTRATION HAS CONSISTENTLY OPPOSED LEGISLATION GRANTING A TEMPORARY STAY OF DEPORTATION, KNOWN AS EXTENDED VOLUNTARY DEPARTURE, OR SIMPLY EVD, TO SALVADORANS. A GRANT OF EVD, AS A SUSPENSION OF ENFORCEMENT OF IMMIGRATION LAW AGAINST A PARTICULAR GROUP OF INDIVIDUALS, IS ESSENTIALLY AN EXERCISE OF PROSECUTORIAL DISCRETION BY THE ATTORNEY GENERAL. IT IS BASED ON CONSIDERATIONS OF FOREIGN AND DOMESTIC POLICY, AS WELL AS HUMANITARIAN CONSIDERATIONS. ALL OTHER ISSUES ASIDE, WE WOULD BE OPPOSED TO ACTION BY THE CONGRESS THAT WOULD ESSENTIALLY USURP THE EXECUTIVE'S PREROGATIVE WITH RESPECT TO IF AND WHEN EVD SHOULD BE GRANTED. IN ADDITION, THERE IS A VERY REAL CONCERN THAT SUCH A GRANT OF EVD COULD ENCOURAGE SIGNIFICANT ADDITIONAL ILLEGAL IMMIGRATION INTO THE UNITED STATES.

AS THE DAS FOR CENTRAL AMERICA IN ARA, HOWEVER, I WILL FOCUS MY COMMENTS ON THE POLITICAL AND HUMAN RIGHTS SITUATIONS IN EL SALVADOR. IT IS MY FIRM CONTENTION THAT BOTH CONTINUE TO IMPROVE, FITFULLY BUT STEADILY IN THE RIGHT DIRECTION. PRESIDENT JOSE NAPOLEON DUARTE, HIMSELF DEPRIVED OF ELECTED OFFICE AND PHYSICALLY MISTREATED IN 1972, IS A MAN CLEARLY COMMITTED TO PEACE, DEMOCRACY AND HUMANIZING THE CONFLICT. HIS ADMINISTRATION HAS MADE SOLID, HARD-WON GAINS IN THE HUMAN RIGHTS AREA, GAINS THAT ARE UNFORTUNATELY ALL TOO OFTEN IGNORED IN THE RUSH TO CONDEMN ISOLATED INSTANCES OF ABUSE.

I WOULD NOTE, FOR EXAMPLE, THAT PRESIDENT DUARTE RECENTLY SUBMITTED A BILL TO THE NATIONAL ASSEMBLY WHICH PROVIDES FOR AN AMNESTY OF ALL NATIONAL SECURITY PRISONERS NOT DIRECTLY INVOLVED IN VIOLENT ACTIVITIES. THIS WILL REDUCE THE SECURITY CASES (ACCUSED GUERRILLAS) FROM APPROXIMATELY 800 TO AROUND 200 HARD-CORE INSURGENT COMBATANTS AND TERRORISTS. PRESIDENT DUARTE'S AMNESTY PROPOSAL WILL ALSO PROVIDE FREEDOM TO HUNDREDS OF ACCUSED CRIMINALS WHO HAVE ALREADY SERVED SIGNIFICANT TIME IN PRETRIAL DETENTION. CONSIDERING EL SALVADOR'S ALREADY SMALL PRISON POPULATION OF ABOUT 4,000, THIS AMNESTY IS A CONCRETE STEP IN THE PROCESS OF FURTHER IMPROVING THE HUMAN RIGHTS SITUATION IN EL SALVADOR.

THIS ONE EXAMPLE COULD BE MULTIPLIED. IT IS UNFORTUNATE THAT MANY SUPPORTERS OF THIS BILL REFUSE TO ACKNOWLEDGE THAT THE SITUATION IN EL SALVADOR HAS AND CONTINUES TO IMPROVE. THEY INSIST THAT THE DUARTE GOVERNMENT IS UNWILLING OR UNABLE TO CURB HUMAN RIGHTS ABUSES AND THAT U.S. MILITARY ASSISTANCE IS PROLONGING THE CONFLICT AND EXACERBATING THE PROBLEMS OF THAT TROUBLED COUNTRY.

THE FACTS - SUPPORTED BY RECENT REPORTS OF THE UNITED NATIONS, THE INTER-AMERICAN HUMAN RIGHTS COMMISSION, AND OTHER OBJECTIVE MONITORING ORGANIZATIONS - BELIE THOSE CLAIMS. THESE REPORTS SHOW THAT POLITICAL CONDITIONS IN EL SALVADOR HAVE

IMPROVED MARKEDLY SINCE THE UNIVERSALLY RECOGNIZED FREE AND FAIR 1984 ELECTION OF PRESIDENT DUARTE. WE BELIEVE THAT U.S. ECONOMIC AND MILITARY ASSISTANCE HAVE HELPED TO BRING ABOUT THESE IMPROVEMENTS. OUR EMBASSY IN EL SALVADOR CLOSELY MONITORS THE HUMAN RIGHTS SITUATION. OUR OFFICERS ARE ON THE SCENE AND IN DAILY CONTACT WITH A BROAD SPECTRUM OF SALVADORANS.

THE UNITED NATIONS SPECIAL RAPPORTEUR FOR HUMAN RIGHTS IN EL SALVADOR, IN HIS 1986 REPORT TO THE U.N. GENERAL ASSEMBLY, LAUDED THE GOVERNMENT FOR "INCREASINGLY SIGNIFICANT AND COMMENDABLE RESULTS IN THE CRUCIAL AREA OF RESPECT FOR THE LIFE OF PERSONS BOTH IN NON-COMBAT SITUATIONS AND IN OR AS A RESULT OF COMBAT." AS THE SPECIAL RAPPORTEUR HAS NOTED, THERE IS A CIVIL CONFLICT IN EL SALVADOR. IN SUCH CONFLICTS, UNINTENDED CIVILIAN CASUALTIES AND HUMAN RIGHTS ABUSES ARE BOUND TO OCCUR. ACCORDING TO EMBASSY REPORTS, DURING 1986, 261 CIVILIANS DIED DUE TO APPARENTLY POLITICAL VIOLENCE OR IN MILITARY ACTIONS; MORE THAN HALF OF THOSE DEATHS WERE ATTRIBUTABLE TO GUERRILLA VIOLENCE. THREE OUT OF FOUR ASYLUM APPLICANTS NOW CLAIM THEY ARE FLEEING GUERRILLA NOT GOVERNMENT OR DEATH SQUAD VIOLENCE, ACCORDING TO THE DEPARTMENT'S ASYLUM OFFICERS. ABUSES OF AUTHORITY BY CIVIL DEFENSE OR SECURITY FORCES COULD BE SHOWN TO BE THE CAUSE OF ONLY 21 OF THE CIVILIAN DEATHS REPORTED BY THE EMBASSY IN 1986, AND IN MOST OF THESE CASES THE PERPETRATORS ARE BEING PROSECUTED.

OBVIOUSLY, ALL IS NOT PERFECT IN EL SALVADOR. SUFFERING AND VIOLENCE ARE BOUND TO OCCUR WHEN A RUTHLESS MINORITY, HOWEVER SMALL, ATTEMPTS TO SEIZE POWER THROUGH THE BARREL OF A GUN. NEVERTHELESS, WE WONDER IF EL SALVADOR IS NOT BEING HELD TO SOME STANDARD OF PERFORMANCE, SOME IDEAL SYSTEM OF JUSTICE, THAT IS IMPOSSIBLE FOR THAT COUNTRY - OR ANY OTHER COUNTRY - TO MEET. WE HAVE OFTEN BEEN STRUCK BY THE DIFFERENT KINDS OF CRITICISM EL SALVADOR HAS RECEIVED OVER THE YEARS. IN THE EARLY 1980s WE HEARD EL SALVADOR WOULD NEVER CHANGE, THAT THE DEATH SQUADS WOULD NEVER BE CURBED WITHOUT A REVOLUTION. IN 1984 AND 1985, AS DEATH SQUAD ACTIVITY WAS BROUGHT UNDER

CONTROL, WE HEARD THAT THE SALVADORAN AIR FORCE WAS CONDUCTING INDISCRIMINATE AIR CAMPAIGNS IN THE COUNTRYSIDE. AS THE AIR FORCE IMPROVED ITS CONDUCT, WE BEGAN TO HEAR THAT POLITICAL DISSENSION WAS BEING STIFLED BY ARRESTS AND THAT DEMOCRACY AND THE RULE OF LAW COULD NEVER BE ESTABLISHED UNTIL PERPETRATORS OF PAST CRIMES WERE ALL TRIED. IN BRIEF, NO MATTER WHAT EL SALVADOR HAS DONE TO IMPROVE ITS PERFORMANCE IN HUMAN RIGHTS, THERE HAVE ALWAYS BEEN NEW CRITICISMS, NEW AREAS OF CONCERN THAT COULD BE FOUND TO QUESTION THE DUARTE GOVERNMENT'S HUMAN RIGHTS COMMITMENT AND OUR POLICY OF SUPPORT FOR SALVADORAN DEMOCRACY.

IN OUR OPINION, THE CRITICISMS HAVE CHANGED BECAUSE EL SALVADOR HAS CHANGED - FOR THE BETTER. HAVE WE TENDED TO ACCENTUATE THE POSITIVE? OF COURSE. EL SALVADOR IS OUR ALLY AND WE ARE PROUD OF WHAT WE HAVE HELPED ACCOMPLISH. HAVE WE OBSCURED OR EVADED THE NEGATIVE. NO. WE HAVE ALWAYS RECOGNIZED THAT PROGRESS IN EL SALVADOR HAS BEEN LESS THAN PERFECT AND WE HAVE ALWAYS SAID THAT WE MUST CONTINUE TO WORK WITH SALVADORAN DEMOCRATS, AN EVER GROWING GROUP, TO ENSURE FUTURE PROGRESS.

A DEMOCRATIC CENTER HAS TAKEN HOLD IN EL SALVADOR. THE EXTREMES OF THE LEFT AND THE RIGHT ARE BEING MARGINALIZED. THE GUERRILLAS, ACCORDING TO RECENT POLLS, HAVE THE SUPPORT OF ONLY 5 OR 6 PERCENT OF THE POPULATION. THE FAR RIGHT, SOURCE OF MUCH EXTRA-LEGAL VIOLENCE IN THE PAST, HAS ALSO BEEN DISCREDITED AND DE-FANGED. THE GOVERNMENT'S FIRM STAND AGAINST DEATH SQUADS HAS BEEN EFFECTIVE; ONE NO LONGER SEES ANYTHING APPROACHING THE WIDESPREAD VIOLENCE OF THE EARLY 1980s.

DEMOCRACY IS SLOWLY BUT SURELY EXTENDING ITS ROOTS IN EL SALVADOR. SPECIAL LEGISLATION BY WHICH SUBVERSIVES WERE ARRESTED HAS LAPSED; ALL ARRESTEES MUST BE TURNED OVER TO JUDICIAL AUTHORITIES WITHIN 72 HOURS. PRESIDENT DUARTE HAS ON THREE DIFFERENT OCCASIONS RELEASED WOUNDED GUERRILLA PRISONERS TO THE CATHOLIC CHURCH, WHICH IN TURN SAW TO THEIR SAFE PASSAGE

OUT OF THE COUNTRY. LEGISLATIVE ELECTIONS WERE HELD IN 1985 AND ARE SCHEDULED AGAIN FOR 1988. PRESIDENTIAL ELECTIONS WILL BE HELD IN 1989. UNLIKE TOO MANY COUNTRIES, THE OUTCOME CANNOT BE PREDICTED. THE NATIONAL UNIVERSITY WAS REOPENED IN 1984. LABOR UNIONS ARE FREE TO ORGANIZE AND DEMONSTRATE, AND THEY OFTEN DO SO AGAINST THE SITTING GOVERNMENT. HUMAN RIGHTS GROUPS, GOVERNMENTAL AND PRIVATE, OPERATE FREELY. THE INTERNATIONAL COMMITTEE OF THE RED CROSS IS WELL ESTABLISHED, AS ARE OTHER PRIVATE GROUPS.

TO RETURN BRIEFLY TO THE BILL IN QUESTION, LET ME ADD THAT ALL AVAILABLE EVIDENCE INDICATES THAT THE VAST MAJORITY OF SALVADORANS HAVE COME TO THE UNITED STATES FOR ECONOMIC REASONS, NOT FROM FEAR OF HUMAN RIGHTS ABUSES IN EL SALVADOR. THIS MOTIVATION FOR IMMIGRATION - LEGAL OR ILLEGAL - IS SHARED BY MILLIONS OF OTHERS IN DEVELOPING NATIONS AROUND THE WORLD. EVD COULD MAKE THE ILLEGAL ROUTE EVEN MORE ATTRACTIVE FOR SALVADORANS, MANY OF WHOM ALREADY HAVE RELATIVES HERE. WE HAVE AN ASYLUM PROCESS FOR THOSE WHO CAN DEMONSTRATE LEGITIMATE FEARS OF RETURNING TO EL SALVADOR, NICARAGUA, OR WHEREVER. ASYLUM IS OF COURSE GRANTED IRRESPECTIVE OF WHETHER THE APPLICANT FEARS THE FAR LEFT OR THE FAR RIGHT.

FOR ALL OF THESE REASONS, THE ADMINISTRATION CONTINUES TO OPPOSE SENATE BILL 332. I WILL SUBMIT FOR THE RECORD THE MAY 20, 1987, STATEMENT BY DEPUTY ASSISTANT SECRETARY OF THE INTER-AMERICAN AFFAIRS BUREAU RICHARD N. HOLWILL, GIVEN BEFORE THE SUBCOMMITTEE ON IMMIGRATION OF THE COMMITTEE OF THE JUDICIARY, HOUSE OF REPRESENTATIVES.

Senator KENNEDY. Mr. Kelley is Associate Director of National Security and International Affairs Division of the General Accounting Office.

Mr. Schulz is with you as well.

Mr. Kelley, we will ask you to proceed in whatever way you want.

STATEMENT OF JOSEPH E. KELLEY, ASSOCIATE DIRECTOR, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY THOMAS J. SCHULZ

Mr. KELLEY. Thank you, Mr. Chairman.

Before I start, I would like to introduce Mr. Schulz. He was responsible for supervising this work we did for Mr. Fish in El Salvador. He is here to help me answer any questions you might have.

I have a brief summary I would like to read, Mr. Chairman.

Senator KENNEDY. Yes. We will include your full statement in the record.

Mr. KELLEY. Thank you.

We appreciate this opportunity to provide our views on S. 332. Our comments are specifically directed toward "Title I.—General Accounting Office Investigation and Report," and are intended to bring to the committee's attention information which we obtained pertinent to the situation in El Salvador and to describe some difficulties we could encounter in carrying out certain provisions of Title I.

As you know, Mr. Chairman, we recently completed a study for Congressman Hamilton Fish, Jr., to determine the extent to which Salvadorans have experienced violations of fundamental human rights upon their return home. We were specifically asked to comment on whether returnees had been targeted for violence or persecution upon their return, and the reliability and use made of reports by the Intergovernmental Committee for Migration, which is known as ICM, on its reception program for returning Salvadorans.

A part of the ICM reception program is to reestablish contact with returnees through mail-in questionnaires, follow-up letters and field surveys. During this process, ICM collects information volunteered by returnees about problems they have experienced. ICM's data has been cited by the State Department as an indication that persecution of returnees is non-existent. Those who believe that Salvadoran returnees do experience human rights violations have questioned this use of ICM's data.

We found that ICM met and maintained some follow-up contact with 9,530, or about two-thirds, of Salvadorans required to leave the United States during December 1, 1984, to December 31, 1986. Some individual cases of reported violence and persecution were identified; however, the data developed by ICM is limited and cannot be used to estimate the overall incidence of violence or persecution to the Salvadoran returnees.

RETURNEES WITH PERSONAL SECURITY PROBLEMS

ICM records showed that, as of February 1987, it had determined that 70 returnees had reported personal security problems, a classification that ICM uses for reports of threats of violence or persecution. ICM has decided that such cases warrant its assistance to individuals to apply for emigration to other countries that have humanitarian resettlement programs. Five returnees were accepted for resettlement by Australia, Canada and Sweden who were determined to be in life-threatening situations from either the government security or guerrilla force, and 32 other cases were under consideration by these countries.

As a part of this review, we sought to determine the extent of violence or persecution experienced by the general population of El Salvador and whether the returnees experienced more violence or persecution than this group. On the first issue, evidence obtained from the U.S. Embassy and human rights monitoring organizations in San Salvador indicates that human rights abuses in El Salvador are still occurring but with distinctly less intensity and frequency than previously. However, the limitations on data collection that exists for all organizations monitoring human rights violations in San Salvador weaken the validity of information on the extent of such occurrences.

EFFECTS OF VIOLENCE NOT DETERMINABLE

On the second issue, it cannot be determined whether Salvadoran returnees, as a group, have experienced more violence than the general population. This is because organizations that gather data on returnees do not have adequate information about their experiences after they return to El Salvador, and organizations that gather data on human rights violations do not identify returnees as a separate group.

Despite the efforts of the U.S. Embassy, ICM and others concerned with the status of Salvadoran returnees, we noted that limited access to individuals or sites affected by civil strife, and a reluctance of returnees to make their personal circumstances known to investigators prevented a definitive determination of the returnees' situation. We believe that we would encounter similar problems in El Salvador, and probably greater problems, in attempting to make such a determination in Nicaragua.

As is evident from the foregoing, we have some concerns about carrying out certain provisions of S. 332 as they relate to the GAO. We have provided more detailed comments to your staff. We would need to continue to work with the Committee on specific assistance we can provide. We would make every effort to conduct the investigation as required.

This concludes my summary statement, Mr. Chairman. I would be pleased to answer any questions you or the committee may have.

Senator KENNEDY. Mr. Schulz, do you have anything?

Mr. SCHULZ. No, sir.

RETURNEES NOT CONTACTED

Senator KENNEDY. As I understand it, there is a significant number of individuals that were not contacted; is that correct?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. And were you able to draw any conclusions why they were not contacted? Did they live in a more remote area or perhaps in a more troublesome area? Did you draw any conclusions about why there was not adequate follow-up?

Mr. KELLEY. Well, initially, they were not contacted when they came into the country because they came in through a different process. But why they were not contacted for follow-up, it is just that they did not respond to the questionnaires that were sent out for the people who were met at the airport. Perhaps it is just a matter that they did not have the correct addresses.

Senator KENNEDY. You did not draw any conclusions whether it is a higher risk group or a lower risk group?

Mr. KELLEY. No, sir.

RETURNEES WITH PERSONAL SECURITY PROBLEMS

Senator KENNEDY. You also in May found that 271 Salvadoran returnees reported to ICM that they were experiencing problems that ICM thought might be related to personal security. Now that number has been reduced. Who adjusted the figures? Was it ICM or GAO?

Mr. KELLEY. ICM. What they did, for the returnees that responded to questionnaires or walked into ICM's office, and who indicated they felt they were having some problems, were they subsequently interviewed. ICM concluded that about 70 of them were experiencing what they call personal security problems, and recommended that they file applications with the countries that I mentioned who were willing to interview them.

Mr. SCHULZ. Of that 271, there were 54 that they could not follow up on, so we do not know the status of those.

Senator KENNEDY. Well, you could probably make the case of the need for further study.

If a returnee were killed or abducted or otherwise harmed upon return, given ICM's methodology—namely, that the participation in the program is voluntary on the part of the returnee—would that information get to ICM?

Mr. KELLEY. Not unless they could get some information from the police, but there would not be any real direct way of finding it out.

Mr. SCHULZ. ICM would not independently be seeking that information.

QUESTIONABLE UTILITY OF ICM REPORT

Senator KENNEDY. Well, it seems to me we should ask about how valuable the whole report really is and whether we should not get better and more up-to-date and more accurate kinds of information. That certainly is provided for in the DeConcini bill.

I have no further questions. The Senator from Wyoming.

Senator SIMPSON. Thank you, Mr. Chairman.

METHODOLOGICAL PROBLEMS OF RIGHTS ORGANIZATIONS

I understand that you have reviewed the methodology used by Tutela Legal and Americas Watch in their tabulation of human rights violations in El Salvador. Could you please briefly review their methodologies with the committee and describe any of their weaknesses?

Mr. KELLEY. Basically, Senator Simpson, both organizations would rely on people complaining that they have a problem. They are small organizations, and when they receive a complaint, they attempt to go out and identify the circumstances and talk to the people or talk to witnesses.

One of the prevailing problems for both organizations and for any other human rights monitoring organization in San Salvador is that there is an access problem. They cannot get out in certain parts of the country to actually speak to the people. Just that limitation creates a real problem for verification. So most of the information they receive is based on testimonial evidence.

Senator SIMPSON. That is, whatever pops up they pursue, and if they hear of something, they try to find that out, but they do not have the staff nor the organization to really determine that?

Mr. KELLEY. Right. Americas Watch has, I believe, one person that tries to follow up on the problems she hears.

Senator SIMPSON. When they claim to do an "independent investigation" of human rights conditions in El Salvador—I am speaking of Americas Watch—in reality they really are relying on the Tutela Legal figures and employ, I think, only one person in El Salvador to do the follow-up; is that not correct?

Mr. KELLEY. Yes.

Senator SIMPSON. A May 1986 report by Americas Watch called "Settling Into Routine," listed the following civilian casualties for 1985: It had total deaths of 1,913; said indiscriminate killings by Army, 371; killings by Army during operations, majority believed civilians, 1,045.

Just briefly tell us how those subtotals are derived. What are the conditions on the figures? What do they mean, and how reliable are they?

Mr. KELLEY. Well, again, I believe they are basically derived from testimonial evidence, and they gather them from various sources in the country. That raises a real reliability question as to how effective they are or how real they are.

We have a difficult time describing what they mean because we did not verify any information down there, but, again, it is based on testimonial evidence primarily.

Mr. SCHULZ. One thing, Senator, regarding Tutela Legal is——

Senator SIMPSON. Could you pull that microphone closer, Mr. Schulz?

Mr. SCHULZ. Okay. I am sorry. One thing regarding Tutela Legal, they use basically, as an office of the Catholic Church, their network system of the Catholic Church in El Salvador. They receive their information, testimonial information, at their central office in San Salvador. If people come from other parts of El Salvador, they are referred by the various churches outside of San Salvador. They only have primarily one place where they receive this information.

Senator SIMPSON. How capable, then, is that organization, Americas Watch, of making a determination which is independent of the Tutela Legal's aggregate statistics?

Mr. KELLEY. Well, as I indicated, I think they basically have a staffing problem, and they have to rely on what people tell them.

ADEQUACY OF ICM'S PERFORMANCE

Senator SIMPSON. Well, then, finally, given the fiscal and the physical constraints of this situation, how good a job is ICM doing in El Salvador? Of those "required-to-depart" aliens that ICM does not meet at the airport, how many do we know leave the U.S. and arrive in San Salvador?

Mr. KELLEY. On that category, they really do not have any follow-up at all. They just have a real problem. Overall, for the returnees which ICM met at the airport we think that they were doing a very good job at reception and were diligent in sending out their questionnaires and following up with surveys. But, again, they have similar problems of access and their methodologies that they use to come up with the conclusion that there are no real problems.

For the required-to-depart returnees, ICM did not meet any of those people at the airport, so they really do not have any record. They are not on their books, in San Salvador.

Mr. SCHULZ. The required-to-depart figures that we cite in our report come from the Immigration and Naturalization Service, to which those people submit a form when they do depart the United States. There has been an issue and our report does indicate that there is a certain number or percentage of people, even deportees and voluntary departures, that were not met by ICM.

If the returnees are able to obtain papers separate from the INS documents, they can go either directly through Salvadoran immigration or they may stop at a transit point and depart in Mexico or Guatemala. So there are a certain amount of people that, just as you figured, were trying to get back to the United States and certainly did not want to come back to El Salvador and they will find a way not to come back. So we do note a certain number of people that just did not show up at ICM, even those that had INS documents, which ICM would receive.

Senator SIMPSON. Does GAO know if all of those "required—to depart" aliens arrived in El Salvador?

Mr. SCHULZ. We are relying on INS for that information.

Senator SIMPSON. I thank you, Mr. Chairman. I appreciate. I may have some further questions.

Senator DECONCINI. Mr. Chairman, I will submit the bulk of my questions, but let me ask one.

VALIDITY OF ICM STATISTICS

I gather from what you are saying that the statistics in the ICM report, if you were to voice an opinion, you would suspect that they are low. Is that right?

Mr. KELLEY. Insofar as the political persecution?

Senator DECONCINI. Yes.

Mr. KELLEY. I really cannot give you a good answer on that. I think that you could perhaps say that about a lot of the statistics there. One of the things that we have found when we talked to the human rights organizations—we talked to about 19 different organizations when we were down there in February—one of the key points that each one of them made to us is that people are very reluctant to tell you their true feelings. They are reluctant both from the standpoint that they will be fingered by the government and fingered by the guerrilla forces. So it is just not the government that they are concerned about.

From that standpoint, I would suggest that many of these statistics could be understated.

Senator DeConcini. That is my point. And I do not want to put you professionally on the spot to attempt to get a professional opinion from you, but it sounds to me from your statement that because of these circumstances, these people are reluctant to convey all of this because they do not know where it may end up and what it might do to them. That is my own conclusion. It seems to me that ICM and other's statistics are more likely to be on the low side than on the high side because there does not seem to be exaggeration when you are talking to the people.

Mr. Kelley. When ICM does their data-gathering, one of the problems we have in trying to project the results of their studies to say that . . ." Therefore, there is no persecution or it is limited . . ." is the technical problems we have with how they do it. ICM is not asking the question; "Are you affected by political persecution?" They are asking things like: "Do you still have a job? Where is your home? How is your health? How is your family?" They do not specifically ask them: "Have you had any problems from local gendarmes?" things like that.

Senator DeConcini. Thank you. Mr. Chairman, I will submit the balance of my questions.

Senator Kennedy. Thank you very much.

Mr. Kelley. Thank you, sir.

[The statement of Mr. Kelley follows:]

Statement of
Joseph E. Kelley, Associate Director,
National Security and International Affairs
Division
U.S. General Accounting Office

Before the
Subcommittee on Immigration and Refugee
Affairs
Committee on the Judiciary
United States Senate

Mr. Chairman,

We appreciate this opportunity to provide our comments on S. 332, a bill to provide for the temporary stay of detention and deportation of certain Salvadorans pending GAO's investigation and report and subsequent congressional review. The bill would require that we make various determinations concerning displaced Salvadorans--those in Central America forcibly returned from the United States and those presently in the United States in an unlawful status--and to submit a report of our findings to the Congress within 14 months of the bill's enactment.

In November 1985, we provided comments to the Congress on a similar bill introduced in the 99th Congress (H.R. 822), stating that should the bill be enacted into law, we would make every effort to conduct the study it called for. We make the same commitment concerning the current bill while expressing neither support nor opposition to the provisions calling for a temporary stay of deportation for Salvadoran nationals to El Salvador.

Our comments are specifically directed toward Title I - General Accounting Office Investigation and Report and are intended to bring to the Committee's attention information which we obtained pertinent to the situation in El Salvador and to describe some difficulties we could encounter in carrying out certain provisions of Title I.

We recently completed a study for Congressman Hamilton Fish, Jr. to determine the extent to which Salvadorans have experienced violations of fundamental human rights upon their return home from the United States. This study covers a portion of what section 101(c)(1) of S. 332 would require us to investigate. Based on our findings, we believe that the availability and usefulness of information which can be obtained is limited and that qualifications would have to be placed on the scope of work to be performed and on any conclusions we would reach resulting from the proposed investigation.

Pursuant to Congressman Fish's October 1986 request, we studied the situation of Salvadoran nationals who had been required to leave the United States to return to El Salvador. We were specifically asked to comment on (1) whether they have been targeted for violence or persecution upon their return and (2) the reliability and use made of reports by the Intergovernmental Committee for Migration (ICM) on its reception program for returning Salvadorans.

A part of the ICM reception program is to reestablish contact with returnees through mail-in questionnaires, follow-up letters, and field surveys. During this process, ICM collects information volunteered by returnees about problems they have experienced. ICM's data has been cited by the State Department as an indication that persecution of returnees is non-existent. Those who believe that Salvadoran returnees do experience human rights violations have questioned this use of ICM's data.

We found that ICM met and maintained some follow-up contact with 9,530, or about two-thirds, of Salvadorans required to leave the United States during December 1, 1984 to December 31, 1986. Some individual cases of reported violence and persecution were identified, however, the data developed by ICM is limited and cannot be used to estimate the overall incidence of violence or persecution to Salvadoran returnees.

ICM records showed that, as of February 1987, it had determined through personal interview or correspondence with returnees, that 70 had reported personal security problems, a classification that ICM uses for reports of threats of violence or persecution. ICM has decided that such cases warrant its assistance to individuals to apply for emigration to other countries that have humanitarian resettlement programs. Australia, Canada, and Sweden have accepted 5 returnees determined to be in life-threatening situations from either government security or guerrilla forces and were considering the applications of 32 others. We did not verify the validity of ICM's determinations or whether, in fact, the reported violence or persecution had occurred.

As a part of our review, we sought to determine (1) the extent of violence or persecution experienced by the general population of El Salvador and (2) whether the returnees experienced more violence and persecution than this group. On the first issue, evidence obtained from the U.S. embassy and human rights monitoring organizations in San Salvador indicates that human rights abuses in El Salvador are still occurring but with distinctly less intensity and frequency than previously. However, the limitations on data collection that exists for all organizations monitoring human rights violations in San Salvador weaken the validity of information on the extent of such occurrences. On the second issue it cannot be determined whether Salvadoran returnees, as a group, have experienced more violence or persecution than the general population. This is because (1) organizations that gather data on returnees do not have adequate information about returnees' experiences after they return to El Salvador and (2) organizations that gather data on human rights violations do not identify returnees as a separate group.

Despite the efforts of the U.S. embassy, ICM, and others concerned with the status of Salvadoran returnees, we noted that limited access to individuals or sites affected by civil strife, and a reluctance of returnees to make their personal circumstances known to investigators prevented a definitive determination of the returnees' situation. If this bill is amended to include consideration of displaced Nicaraguans as do H.R. 618 and H.R. 1409, the companion bills before the House of Representatives, we believe that we would encounter similar if not greater problems in attempting to make such a determination in Nicaragua. This is because no reception program for returnees is operating in that country and the State Department and the press are reporting that the Nicaraguan government exercises substantial censorship of speech, press, and other civil liberties.

To be able to respond effectively to some of the specific points raised in the legislation and do so in the 14-month timeframe, we would need to obtain clarification on or to limit the scope of certain requirements that the bill places on us. Also, we would have to rely to a large extent on information already available or being developed by others. For example, the determinations required by sections 101(b)(1-5) and 101(c)(2) regarding the condition and status of displaced Salvadorans located in various Central American countries would be difficult to make under most circumstances because of the size and dispersion of the displaced population. However, we are concerned that these determinations would be even more difficult because the responsibility for providing food, housing, medical, and other assistance to these displaced persons rests primarily with intergovernmental, host-country Central American government, and private voluntary organizations. In this circumstance, we would be very dependent on the level of cooperation afforded to us by these non-U.S. government agencies.

As is evident from the foregoing, we have some concerns about carrying out certain provisions of S. 332 as they relate to GAO. We have provided more detailed comments about the wording of the bill to the Committee staff and we would need to work with the Committee on the specific assistance we can provide. We would make every effort to conduct the investigation as required.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or members of the Committee may have.

Senator KENNEDY. Our final panel, Aryeh Neier, Vice Chairman, Americas Watch; Michael Posner, Lawyers Committee for Human Rights, and Roger Conner, Federation for American Immigration Reform.

Mr. Neier, we will start off with your presentation.

STATEMENT OF PANEL CONSISTING OF ARYEH NEIER, VICE CHAIRMAN, AMERICAS WATCH; MICHAEL POSNER, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS; AND ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. NEIER. Yes, thank you very much, Senator Kennedy. I also want to thank Senator DeConcini for his leadership in presenting this legislation and staying with it for such a long period.

The Americas Watch does try to monitor human rights throughout the western hemisphere: in the Caribbean, Central America and in South America. Ordinarily, we do that by sending missions to countries, by maintaining contact with local human rights monitors, and by gathering information in every way that we possibly can. In view of the previous questions, let me just address our monitoring in El Salvador.

Because there were disputes over the numbers of those who were being killed, the kinds of abuses that were taking place and the source of the abuses, former Ambassador Thomas Pickering proposed to us about three years ago that we should establish a permanent presence in El Salvador and put our own person there full-time in order to try to supplement our understanding of the human rights situations there. We have previously used part-time persons in various parts of the western hemisphere in order to gather information. We took the unusual step in response to Ambassador Pickering's request or invitation of opening our own office in El Salvador. We did that in March 1985. It is staffed by a lawyer with extensive experience in human rights investigations. She has assisting her a Salvadoran secretary and another lawyer who is serving as an intern in that office.

AMERICAS WATCH METHODOLOGY

We do not gather our own statistics on human rights abuses in El Salvador. We are not capable of gathering our own statistics on human rights abuses. We present in our reports the statistics that have been gathered by the church human rights office, Tutela Legal, because we find that of the various statistics that are available within El Salvador—all of which are flawed—we consider those to be the least flawed.

I would point out that when the United States government testifies and says the embassy's statistics are so-and-so, the implication is that the embassy has actually looked into these matters and conducted investigations. Nothing could be further from the truth. What the embassy does is to clip the Salvadoran press, and it lists the deaths that are tabulated by the Salvadoran press; and its tabulations that are sent to the State Department are simply what appears in the Salvadoran press.

The next question, obviously, is where does the Salvadoran press get its information. The answer is that overwhelmingly, and with very few exceptions, the Salvadoran press gets its information from the Salvadoran government, principally from the Armed Forces Press Office. So, in effect, what the embassy is doing is retailing at one remove the information that has come from the Armed Forces Press Office.

We do not find those useful statistics. We recognize that there are severe limitations on any other statistics that are available. It ought to be possible to get reliable statistics on violence from a government itself through the machinery of law, but the machinery of law does not work in El Salvador. So we are forced to rely upon such inadequate information as can be produced by something like the Salvadoran church. Not all of the Salvadoran church's reports are absolutely right. Sometimes they rely upon people who are not reliable. Sometimes people try to deceive them. We think that, acting in good faith, they try to do as good a job as can be done, and we think it is worthwhile publishing in our reports the information that we obtain from the church.

What we do, which we think is very important, is when we hear of major abuses—if we can get there, and we very often cannot—we try to go to the site to interview witnesses to find out what took place. We publish descriptive accounts of abuses. We publish testimony that we collect ourselves. We go to places where refugees gather in Honduras. We go to displaced persons camps. We go to the sites of political violence and try to gather the data.

I would say that our direct information-gathering is valuable to us in enabling us to assess the reliability of the information published in statistical form by the church. By and large, we find that when we check into things our information tends to be supportive of the information that is gathered by the church. Not always. There have been cases where we have not found it to be absolutely correct. Witnesses tell us something different than the witnesses who are interviewed by the church. But we think that the church's information is valuable enough so that it is well worth presenting—and that it is more valuable in statistical form than any other information that is available.

SALVADORAN HUMAN RIGHTS DATA

I also want to say with respect to the human rights situation in El Salvador that it is almost the only place I know—Guatemala is the other place—where the human rights situation is presented by quantifying the number of people who have been killed. Every place else in the world—if you inquire into the human rights situation, in the Soviet Union, if you inquire into the human rights situation in the People's Republic of China, if you inquire into the human rights situation in South Africa or any other place where there is significant abuse of human rights—we discuss abuses not in terms of the numbers of people being killed, but in terms of other forms of persecution that people suffer.

I think we got into the bad habit of dealing with the human rights situation in El Salvador in terms of quantifying deaths because of the extraordinary death totals of the early 1980s. Now that the death totals are no longer quite as staggering as they were in the early 1980s, we are told that the situation of human rights in El Salvador has improved.

My own view and the view of my organization is that it is better to consider the human rights situation according to norms that apply generally, and not according to the extraordinarily distorted standards by which we became accustomed to considering the human rights situation in El Salvador.

CONFLICTS IN EL SALVADOR AND NICARAGUA

Let me then make some comments about the nature of the conflicts in El Salvador and in Nicaragua. The nature of the conflicts is that there are not pitched battles between armies. It is not control of territory that is being fought for or control of cities that is being fought for. The nature of the conflicts in El Salvador and Nicaragua is that the contending forces are fighting for the control of the civilian population. Because they are fighting for the control of the civilian population, the people of the country are the objects of the war.

As the objects of the war, they are very often the victims of the war; that is, those civilians who are perceived by the forces of the two sides in both Nicaragua and El Salvador as being aligned with the other side are the people who are attacked. In Nicaragua, the contras attack cooperatives because the people who are resident in cooperatives are seen as supporters of the government, people who will provide the government with information about the movements of contra forces. The contras want to avoid direct combat with government forces. They want to be able to operate the way guerrillas generally operate, which means choosing the moment at which they will engage in combat. Therefore, they attack those individuals in cooperatives who are seen as likely to give information to the government.

By the same token, the Sandinistas attack civilians in areas where civilians support the contras. Right now, there is very intense combat in the south central region of Nicaragua, principally around the municipality of Nueva Guinea, and we have found more severe abuses by the Sandinistas against civilians at any time since the abuses against the Mishitos in late 1981 and during 1982. These are attacks on civilians—that is, civilians are seen as aiding the contras with information and with food. They are, therefore, the enemies of the Sandinistas.

In El Salvador, it is much the same thing. The Salvadoran armed forces have seen civilians in a significant part of the country as being aligned politically with the guerrillas. They think of them as guerrilla supporters because of the places where these people live—even though they did not choose where they live. They live there because their families lived there before them, and they happened to be born in those areas, and they are struggling to survive by maintaining subsistence agriculture in those areas. But they are seen as supporting the guerrillas because the guerrillas operate there; because the guerrillas in El Salvador also want to avoid direct combat with the armed forces; because the guerrillas in El Salvador also want food; and because the guerrillas in El Salvador also do not want information given to the armed forces about their locations. Because those civilians are seen as being supportive of the guerrillas because of where they happen to live, they have been the objects of attack in El Salvador.

Similarly, in El Salvador, the guerrillas consider certain individuals as informers for the government, people who will report their movements. The guerrillas attack those persons.

More recently, in El Salvador, there has been the significant problem of the use of land mines. The United States has pushed the Salvadoran armed forces to be more aggressive in patrols. The guerrillas are suffering because of the more aggressive patrols. They try to deter these patrols by placing land mines in the paths which the armed forces would traverse in order to go after the guerrillas. Unfortunately, El Salvador is a crowded country, and civilians have to try and maintain subsistence agriculture in those areas. So civilians very often step on those land mines, and they lose limbs or they get killed because they step on a land mine.

The contras in Nicaragua have been aiming at the economy of Nicaragua. They have placed land mines on roads that are traveled by a great many civilians because that is a way of disrupting the Nicaraguan economy and driving the Nicaraguan government into ever deeper dislike from the population because of the deteriorating economy. It is a tactic that causes severe harm to civilians who get killed and maimed by contra land mines.

One of the consequences of the way in which the war has been fought in these countries is that it has become extremely dangerous or impossible for civilians to live in significant parts of those countries. In El Salvador, the internally displaced population is 550,000 or 600,000 people, perhaps 12 percent of the entire population. In Nicaragua, the internally displaced population is 250,000 or so, perhaps seven percent of the entire population. Others have fled the country entirely.

I would point out that very few of the people who are likely to be affected by the legislation considered here are the people who are coming from the safe parts of those countries. They are people who are fleeing those areas where the conflict is raging. If you want to determine that, simply go to those countries, and you will find that some areas of those countries are virtually entirely depopulated. Those people have gone some place. Those are the people we are talking about. Other parts of those countries are well populated. Those people are fleeing because of a conflict. If they were fleeing simply for economic reasons, they would be fleeing equally from different parts of the country.

It is for those reasons that we believe that it is valuable, important, humane, generous and decent to try to do something about those persons, and not to try to force them back to the places that they have fled.

Thank you very much.

[The statement of Mr. Neier follows:]

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HUMAN RIGHTS CONDITIONS IN EL SALVADOR AND NICARAGUA

The Case for Extended Voluntary Departure Status

Testimony of Aryeh Neier, Vice Chairman

The Senate Subcommittee on Immigration and Refugee Policy

June 18, 1987

Thank you, Chairman Kennedy for holding this hearing and for inviting me to testify. I appreciate the opportunity to appear before you to discuss S.332. The Americas Watch supports the temporary suspension of deportation of Salvadorans living in the United States until it is safe for them to return to their homeland. We commend Senator DeConcini and his staff for their important effort. It is our understanding that Senator Kennedy will propose an amendment to include Nicaraguan refugees. The Americas Watch supports that initiative.

This morning I will address human rights conditions in Nicaragua and El Salvador, which, we believe, justify the passage of S.332. The Americas Watch has monitored human rights in Central America for the past six years, and has published 10 reports on Nicaragua and 12 reports on El Salvador. We have maintained an office directed by a U.S. attorney based in San Salvador for more than two years.

The director of our office frequently travels to Nicaragua to monitor conditions there as well. In addition, many other members of our staff and board take part in our investigations in both countries, and I have visited the region more than a dozen times in the past six years.

HUMAN RIGHTS IN EL SALVADOR

The most important features of the human rights situation in El Salvador are: 1) the country is at war and noncombatants are victimized by both the armed forces and the guerrillas; 2) the object of both sides in the war is to control the civilian population. Many of those they cannot control are deliberately driven from their homes to create free fire zones or to deny their opponents a civilian base of support. This has created a vast population of internally displaced persons and external refugees who cannot safely return to their homes and livelihoods; and 3) the Salvadoran judicial system is subservient to the armed forces and is demonstrably incapable of offering Salvadoran citizens legal recourse or protection from abuses of human rights.

To turn first to the last of these, the State Department Country Report for 1986 notes that:

> Judicial authority historically has not extended to the military. Although low ranking military and police are discharged and turned over to the civilian courts for trial of criminal offenses, in practice the officers of the armed and security forces are treated differently from other citizens before the law. Judges are frequently reluctant to bring charges against them, and colleagues often cannot be relied upon to cooperate in the prosecution of crimes imputed to a fellow officer. Also, real or perceived intimidation of judges and

> juries by members of the armed forces occasionally will overcome the prosecutorial efforts of the Attorney General's office.

To put it more plainly, the "occasional" intimidation of the judiciary is actually a general practice in El Salvador, and accounts for the fact that not a single military officer and few -- if any -- soldiers have been criminally convicted for human rights abuses against Salvadoran civilians.

A recent case, involving non-political abuses in which the victims themselves were far more powerful than the typical victims of human rights abuses, described in a UPI dispatch that was published in The Washington Times of April 4, 1987, is illustrative of the impunity with which members of the armed forces act. The case involves high-ranking members of the Salvadoran military officer corps who were implicated in a kidnapping-for-profit ring whose victims were family members of Salvador's wealthy elite. A young woman judge hearing a related case (the theft of several metal buildings by members of the kidnapping ring) reversed her original ruling after her house was machine-gunned twice, and sharply reduced the charges against the defendants from a felony to a misdemeanor. The vulnerability of a woman judge (who happens to be pregnant) to physical attack in this case is mirrored in cases around the country. Witnesses are afraid to testify against soldiers or civil defense members; lawyers and judges are terrified for their lives; physical protection is nonexistent. In a 1985 case involving killings by several members of the Army near the town of Armenia, according to court officials, the local garrison commander entered the courtroom accompanied by some eight soldiers. The defense attorney gesturing to the commander, urged the five jurors to acquit the soldiers, even though they had confessed to the murders because this commander believed they were "good boys." The jury acquitted the soldiers.

The complete absence of military accountability under the rule of law is a critical indicator in determining the safety of Salvadorans who are returned to their country. Many of the refugees who fled to the U.S. did so because of targeted killings of family members or neighbors, or because of indiscriminate military operations in which civilians were victimized. The military's failure to purge its ranks of officers responsible for violence in the past, and its failure to punish military personnel who continue to engage in abuses, assures that the justice system is no more able to protect Salvadoran citizens today than it was when the refugees fled the country.

The guerrilla attack on El Paraiso in March in which 69 soldiers and one U.S. military advisor were killed is a reminder that the war in El Salvador continues without an end in sight. Though the number of civilians killed or disappeared is greatly reduced from the early 1980s (when literally tens of thousands of noncombatants were killed by the armed forces and the death squads associated with them) the number of human rights abuses today continues to be extraordinarily high. It is difficult to imagine how, after killing more than 40,000 civilians in the past seven years, the armed forces continue to find politically suspect victims to kill. Yet in 1986 the Salvadoran church human rights monitoring office, Tutela Legal, documented 45 death squad killings, 52 indiscriminate killings by the army, and 47 targeted assassinations by the army. Moreover, the church estimated that an additional 778 people were killed in military operations, where the majority were presumed to be civilians, but where the human rights office was unable to confirm the reports because on-site investigations were not possible or permitted. (Americas Watch, like Tutela Legal itself, regards this category as not comparably solid to the other figures compiled by Tutela Legal because of the limitations on its capacity to try to verify the reports on which this category is based.) Tutela Legal reported 81 disappearances in 1986.

Deaths due to aerial bombardment have been sharply reduced from the high point in 1983, 1984, and 1985, in part because the Salvadorans remaining in areas of guerrilla control have learned to protect themselves by hiding in shelters or have fled these areas of the country altogether; and in part because the Salvadoran Air Force, under human rights pressure, has used its firepower with greater discretion. Nonetheless, civilian casualties from aerial bombardment continue to be reported. The New York Times reported on January 31, 1987 that the Salvadoran Air Force killed seven civilians in bombing and strafing runs in northern San Miguel Department. The report noted that the San Miguel attack, in which three small children were killed, appeared to violate the rules of engagement promulgated by President Duarte which "prohibit the air force from firing on dwellings that may house civilians and also require special permission before bombing is conducted near civilian areas."

The Americas Watch obtained credible testimony from witnesses to aerial attacks on civilians in Cabanas and Guazapa during 1986, as well.

An increasing human rights problem in El Salvador has been targeted political killings by the FMLN. The Americas Watch interviewed witnesses to the capture, in San Vicente in January 1987, of seven civilians by the FMLN. The next day six were found executed, the seventh is disappeared and is believed to be dead.

An April 25, 1987 UPI dispatch described a summary execution by the FMLN of a person believed to be an army spy. The article noted that following the assassination, hundreds of villagers were frightened into abandoning their town:

> The abuses appear to have broken a fragile psychological barrier for people who have lived with the war for eight years, moving them to leave the only homes most have ever known. Several explained that for the first time, the rebels appeared to be threatening the entire village, rather than just punishing a few inhabitants.

According to Tutela Legal, the FMLN committed 42 targeted political assassinations in 1986. Both the Salvadoran Army and the FMLN are increasingly using civilian informers to infiltrate areas believed to be sympathetic to the other side. Accordingly, we fear that assassinations of civilians believed to be assisting either the FMLN or the army are likely to increase.

Another important human rights problem is the use of land mines in El Salvador. Both the FMLN and the army use land mines, though it appears that most civilian casualties are due to improper or indiscriminate use of land mines by the FMLN. Tutela Legal reported 54 civilian victims of mining in 1986, of which it considered that eight were victims of Army mines. All or most of the 46 remaining deaths are believed to be caused by FMLN land mines.

In the past year and a half the army has increasingly resorted to the practice of forcible relocation to remove civilians from areas of guerrilla operations, as well as continuing its practice of terrorizing civilians into fleeing their homes through such means as bombing and mortaring, destroying crops and food in storage, and preventing visits by international humanitarian agencies to conflicted areas. The army has also forcibly removed civilians from unconflicted areas, such as its relocation of some 80 civilians from San Carlos Lempa in August, 1986. The peasants were held at a military base for six weeks -- without legal basis -- in unsatisfactory conditions of shelter, hygiene, and health.

The army's practices in conflicted areas of the country are of particular relevance to this committee in determining whether it is appropriate to return Salvadoran refugees to their country. Many of the Salvadorans who have fled the country since 1980 came from conflicted zones which are still conflicted. Some of these areas have been virtually depopulated as peasants fled indiscriminate military operations, aerial bombardment, or forced recruitment by the guerrillas. As a consequence, many of the Salvadorans in the U.S. have no home in El Salvador to which to return, and will join the hundreds of thousands of displaced persons already living on church charity or meager government resources.

Before turning to the question of human rights in Nicaragua, I would like to address the issue of the Administration's policy with respect to granting asylum to Central American refugees. According to a study by the Government Accounting office (GAO), released by Senator Arlen Specter on January 20, 1987, the Immigration and Naturalization Service employs a subjective standard in determining asylum eligibility and discriminates against Central American applicants. In releasing the report, Senator Specter noted that:

> Aliens who stated on their applications that they were arrested, imprisoned, had their life threatened or were tortured had much lower approval rates if they were from El Salvador and Nicaragua than if they were from Poland and Iran. For example, those who described torture to support their asylum request had an approval rate of 4 percent in El Salvador cases, 15 percent in Nicaragua, 90 percent in Poland and 64 percent in Iran.

Moreover, the study found that among the files of the four countries of origin examined, only Salvadorans had actually been deported after having been denied asylum.

Clearly, the executive branch has not fairly administered the asylum standard articulated in the Refugee Act of 1980 regarding political asylum and has in fact deported many Salvadorans who had a well-founded fear of persecution in their homeland. Extended voluntary departure status for Salvadorans is necessary because all Salvadorans are potentially endangered by civil war and massive dislocation. The Administration's refusal to grant asylum in individual cases heightens the need for legislation to suspend deportation temporarily.

HUMAN RIGHTS IN NICARAGUA

Internal war and attendant dislocation in Nicaragua justify a suspension of deportation of Nicaraguans from the United States. The Americas Watch supports the Kennedy amendment to include Nicaraguan refugees. There are a number of human rights problems in Nicaragua; in my testimony I will address those issues which are particularly relevant to the legislation you are considering.

The Americas Watch monitors violations of the laws of war in Nicaragua by both the government and the contras. We have found that the contras engage in consistent violations of the laws of war, including targeted assassinations and kidnappings of noncombatants; indiscriminate military operations which victimize civilians; the use of land mines in areas heavily travelled by civilians; and military attacks on villages and cooperatives.

The nature of the war in Nicaragua assures the use of such tactics, because the contras are attempting to operate militarily in areas where some of the civilians are at least sympathetic to the Nicaraguan government and some are actively involved in government projects. Because of the possibility that contra military activity might be betrayed to the government at any time by civilians sympathetic to the Sandinistas, the contras assassinate such individuals and frequently kill or kidnap their family members.

The Nicaraguan Government, for its part, takes action against civilians perceived as sympathetic to the contra cause. Scores of thousands have been forcibly relocated from conflict areas, either to get them out of the way of harm or because the government fears they are sympathetic to the contras and will aid them. The Sandinistas' tactics involve detaining persons believed to be sympathetic to the contras or actively involved in supporting the contras. Under international law, such detentions on suspicion may be legitimate during a state of emergency. Nonetheless, the Americas Watch has criticized the Nicaraguan Government because its interpretation of security risk has been overly broad and subjective, and because it has cast a very wide net in rounding up suspects who may have had little or no contact with the armed opposition. Many detainees are held in abusive conditions of pre-trial detention without charge and subjected to harsh interrogation practices before being released for lack of evidence. In 1983 the government created special courts (TPAs) for the purpose of trying security-related cases. The Americas Watch has objected to the TPAs because they are politicized and do not provide appropriate judicial safeguards for defendants, and we have urged that they be abolished. According to figures provided by the Ministry of Justice, there were 976 cases considered by the TPAs from January to August, 1986. There were, additionally, many other Nicaraguans who were arrested and then released after investigations by the security police. The anti-government human rights monitoring group CPDH has reported some 2,000 arrests on security-related grounds last year.

Aside from these abuses, which have been discussed in considerable detail in Americas Watch's most recent reports on Nicaragua, we released in May information that we gathered during the previous two months on violations of the laws of war in the south central region of Nicaragua. Our research shows that, in recent months, both sides are engaged in increasingly savage practices, and that many civilians are being driven from their homes by the practices of the combatants.

Nicaraguan civilians are inevitably victimized by the war because of the contras' efforts (through killings and abductions) and by the government's efforts (through jailing and interrogation and, in recent months, by more violent abuses) to neutralize noncombatants perceived as being sympathetic to the other side. Accordingly, we believe that civilians who have fled the country should not be sent home until it is safe for them.

Thank you.

Senator DECONCINI [presiding]. Mr. Neier, thank you very much for that testimony and your leadership, your group on this legislation and in many other important humanitarian areas that you are involved in.

Mr. Posner, if you could summarize your statement, your full statement will appear in the record.

Mr. POSNER. Very good. Thank you.

I want first to thank you for asking me to appear here to testify. I also would ask that a statement that will be submitted to the committee staff by the American Civil Liberties Union in the next several days be submitted to the record.

Senator DECONCINI. Without objection, it will appear in the record also.

Mr. POSNER. Thank you.

I would also like to associate myself and the Lawyers Committee with the comments of Aryeh Neier and Americas Watch with regard to Nicaragua. My testimony focuses on El Salvador, but we are also concerned about the human rights situation in Nicaragua and have studied for the past several years, in some detail, the so-called anti-Somozista popular tribunals of people's courts there. These courts have handled security cases in that country. They are part of a very serious human rights problem in Nicaragua.

HUMAN RIGHTS IN EL SALVADOR

With regard to El Salvador, I want to make two points: One is that we share the view expressed by Mr. Walker earlier today and by the State Department that violence in El Salvador is down. We view that as an encouraging sign. We recognize also a number of public statements and gestures made by President Duarte to improve the human rights situation in El Salvador which we support. We have tried to work in conjunction with those efforts.

At the same time, we view the human rights situation in El Salvador today as continuing to be quite serious. Levels of violence, political violence continue to be highly unacceptable, and there is great danger, we believe, to a number of people both in the country and potentially a danger to those who would come back.

FAILURE TO PROTECT RIGHTS

The Lawyers Committee has focused in particular on institutions. Our examination of these institutions reinforces a point that Aryeh Neier was making a minute ago. We believe that when you look at a human rights situation it is important also to look at the way in which institutions of government, such as the courts, protect rights. It has been our view, based on seven years of study of the judicial system in El Salvador, that it has been a crippled system incapable of protecting the rights of individuals who fall out of favor with the government. This has manifested itself in several ways. One is that for those who committed abuses in the past, including notorious abuses, such as the killing of Archbishop Romero, the killing of American labor advisers, the Las Hojas massacre—cases identified by President Duarte time and again, there has not been an effort, a successful effort to bring those responsible to justice.

Until there is a successful effort to hold accountable those who have committed past abuses, it remains unlikely that the human rights situation in the future is going to be satisfactory.

Secondly, with regard to national security cases—that is to say, cases where those political opponents who are identified by the government are brought into custody and detention—there continue to be violations of the integrity of the person, including physical and psychological torture. In addition, we believe that the security case procedures, through Decree 618, are highly unsatisfactory and not protective of basic human rights.

In short—and this is a conclusion that I believe the U.N. Special Rapporteur shares in his report—we believe that until the institutions of government, including the courts in El Salvador, are able and ready to offer protection to citizens, including political opponents, it is going to be necessary for the United States Government and for this Congress and this committee to consider the type of legislation that is being discussed here this morning.

THE REFUGEE ACT AND VOLUNTARY DEPARTURE

I want to take one moment also and say a word in response to a comment that Senator Simpson made. I think there is some confusion in this morning's discussion between the Refugee Act of 1980, which I have followed with great interest since its inception, and the concept of extended voluntary departure. I know Senator Simpson is as familiar with these two provisions as anyone in the Congress.

When we talk about the asylum process, I think it is fair to say, and I certainly would say, that there are a number of people from El Salvador now living in the United States who are, in my opinion, eligible and should be granted political asylum. I believe that the asylum process has not handled those cases in a fair or even-handed manner. I recognize, that even if the asylum system were reworked and improved in a way that would provide an objective, fair hearing to every claim, every Salvadoran would not be entitled to asylum.

What we are talking about here is a second category of people, those who are technically not eligible for the asylum under the definition of the Refugee Act, definition that limits asylum to people being singled out for persecution on the basis of political opinion or race or nationality or whatever. We are talking about people who are fleeing a civil war. They constitute a third category, between your two categories, Senator Simpson, of refugees and economic migrants—namely those who are fleeing violence, those who are fleeing an internal armed conflict or disturbance or unrest.

The situation in El Salvador is such that, as Aryeh mentions, there are tens of thousands of people who have fled their homes not because they were involved in any particular political activity, but because there is a war going on. And many unfortunate, innocent people are caught between two sides that they are not part of. It is to me a humanitarian gesture in the best tradition of this country that Senator DeConcini and Congressman Moakley have introduced this legislation. I think in this instance it is the appropriate response to deal with this category of people who are not, by any standard or by any interpretation or application of the Refugee Act, strictly entitled to political asylum in the United States.

Thank you very much.

[The statements of Mr. Posner and the A.C.L.U. follow:]

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Human Rights in El Salvador

Testimony of Michael Posner
to the
Subcommittee on Immigration and Refugee Affairs
of the
Senate Judiciary Committee

June 18, 1987

Mr. Chairman, thank you for inviting me to testify. My name is Michael Posner. I am the Executive Director of the Lawyers Committee for Human Rights. The Lawyers Committee monitors human rights in more than two dozen countries worldwide. Our work focuses on the independence and effectiveness of judicial systems in promoting respect for human rights. The Committee's work is non-partisan, holding every government to a single international legal standard, that contained in the Universal Declaration of Human Rights.

Since 1980 the Committee has closely monitored the functioning of El Salvador's system of justice. The Committee has served as legal counsel to the relatives of four U.S. churchwomen who were murdered in El Salvador in December 1980. In the last eight years the Lawyers Committee has published eleven reports on El Salvador's human rights and refugee situation. Our most recent report, From the Ashes, was published in March. It was written by two lawyers, Stewart Baker of Steptoe & Johnson in Washington and Richard Hiller of Teitelbaum & Hiller of New York, both of whom visited El Salvador on the Lawyers Committee's behalf. The report is also based on outstanding work done for the Committee in El Salvador by our representative there, Jemera Rone. From the Ashes describes El Salvador's seriously disabled system of justice. It also examines initial, and thus far not very successful efforts, to rebuild that system.

Mr. Chairman, in my testimony this morning I will briefly describe the current human rights situation in El Salvador today, with particular emphasis on the Salvadoran judiciary. It is our belief that without an independent, properly functioning judicial system the basic human rights of Salvadorans cannot be protected, including those Salvadorans who are forced to return from the United States and other countries.

Human Rights in El Salvador - 1987

Since 1980 El Salvador has been ravaged by a civil war and a pervasive pattern of gross human rights violations. During that period more than 50,000 non-combatant civilians have been killed, thousands more have disappeared, or been tortured by government forces. In the recent year's reports of disappearances and deaths at the hands of El Salvador's army and three security forces have greatly declined, as have reports of physical torture. Since January the country has functioned without a state of emergency for the first time since the civil war began in 1980, though the reimposition of some form of emergency seems all but certain.

In February the government also allowed Decree 50 to lapse, though it has now been replaced by a substantially similar provision, Decree 618. This is an emergency provision which allows special courts to hear national security cases. In the past several years thousands of Salvadorans have been held pursuant to these emergency procedures, which severely limit basic due process rights. In numerous cases those held in detention under these provisions have been subjected to various forms of physical and psychological coercion.

President Duarte continues to speak about human rights with the eloquence and credibility of a man who was himself a victim of physical abuse under an earlier regime. Though his public pronouncements, coupled with the reduction in violence since the early 1980's are reasons for some hope, they are not dispositive. Today, El Salvador stands at a crossroads. One of many questions now facing the Duarte government is how it can institutionalize respect for basic human rights in its armed forces, a sector of society which has traditionally been a law unto itself. Until this process takes place, and the security forces are held accountable for their actions a significant portion of El Salvador's population, including many people now residing in the U.S. and other countries, has good reason to fear that it will be a target for persecution in El Salvador.

Addressing Past Abuses

One overwhelming problem facing the Duarte government is how to come to terms with the tens of thousands of cases of gross human rights abuses that have been committed during the past seven years. This is an essential step to preventing future violations from occurring. In all but a handful of these cases, no one has been investigated, much less prosecuted for their criminal actions.

Those who tolerated, and in some cases led the death squads may have lost control of the legislature, but they remain influential in the security forces, the judiciary and in other sectors of Salvadoran society. Despite President Duarte's promises to "fight openly and tirelessly to control abuses of authority," his government has not taken decisive steps to purge abusive elements from the armed forces. Whether to prosecute members of the armed forces for past abuses - however horrendous - remains an incredibly sensitive issue in El Salvador that has yet to be addressed by the government.

Consider these cases:

- On March 24, 1980, Archbishop Oscar Arnulfo Romero, one of the most outspoken and respected Latin American church leaders, was gunned down while saying mass in the Divine Providence Hospital in San Salvador. The day before he was killed, Archbishop Romero preached a four hour mass. In his sermon he appealed to members of the army and security forces to stop killing innocent people.

  After seven years, efforts to investigate the Archbishop's murder have not resulted in the arrest or conviction of any of those responsible. In August 1984 President Duarte created a special commission to investigate selected human rights cases. He identified this as one of several key cases to be taken up by a special Presidentially-appointed commission. Reports in the press have linked right-wing forces, including Roberto D'Aubuisson to the Archbishop's murder.

- On February 23, 1983 Indian farmers were massacred at a farming cooperative in Las Hojas by government soldiers and members of the local civil defense. The soldiers dragged male occupants from their huts, shooting seven peasants in the head. Later that day 18 more corpses were found in the underbrush about a mile from Las Hojas. The next day the Salvadoran Minister of Defense publically pledged that a full investigation would be conducted by the government's Human Rights Commission.

  Among those implicated in the massacre were Colonel Elmer Gonzalez Araujo, then the provincial army commander in the Las Hojas area, Captain Carlos Alfonso Figueroa Morales, and Major Oscar Alberto Leon Linares. The government Human Rights Commission charged Captain Figueroa with direct responsibility for the murders. Though charges were brought against several army and civil defense members, these charges were dismissed for "lack of evidence."

- On May 6, 1986 Maria Teresa Tula, also known as Laura Pinto was abducted by armed men in civilian clothes. Ms. Tula is a member of the Committee of Mothers and Relatives of Political Prisoners, Disappeared and Killed in El Salvador (Co-madres). While she was detained from May 6 to 8, 1986, she was raped and tortured. Her captors, who never identified themselves, interrogated her extensively about the activities of the Co-madres.

  On May 28 she was abducted again by four armed men in plainclothes. After numerous local and international appeals were made on her behalf, it was disclosed that she was being held by the Treasury Police "on suspicion of belonging to terrorist groups." While in Treasury Police custody she was continually subjected to psychological pressure, physical beatings and relentless interrogation. Though she was subsequently released, there has yet to be any investigation of her abduction and torture while in official custody.

In these and other cases no issue is more important than the creation of a functioning judicial system. Human rights will never be fully respected as long as the armed forces remain beyond the reach of the civilian courts.

In 1983 a delegation representing the Association of the Bar of the City of New York concluded:

> The collapse of El Salvador's criminal justice system is general and pervasive. Indeed as best we can tell that system has never functioned effectively in the criminal justice field. The civil war in which the nation has been engulfed since 1980 has exacerbated and revealed the inadequacy of El Salvador's legal system, but even if the war were to end tomorrow, major changes would be required in Salvadoran society to create a modern justice system and to permit that system to function fairly and effectively.

This assessment of El Salvador's past is unfortunately still substantially true today. A report by the United Nations Special Representative on human rights in El Salvador, released in February 1987, concluded "...on the whole, the efforts of the Salvadoran judicial system to investigate and punish serious, politically-motivated human rights violations are highly unsatisfactory." Though his report paints an optimistic, and I believe, somewhat unrealistic picture of El Salvador, even he is uniformly and seriously critical of the justice system. Noting that in most criminal cases, legal proceedings are instituted, he concludes that "these proceedings advance at an extraordinarily slow pace and encounter almost insuperable obstacles to obtaining convictions, thus fostering a harmful climate of impunity." (emphasis added) (E/CN.4/1987/21 at page 13).

We agree. The current system seems tolerable only when compared to the horrors of the early 1980's. And while the levels of violence have been reduced, we continue to be reminded that El Salvador's establishment, including key elements of its current government, still has not repudiated the bloody tactics of the early 1980's. As long as almost all past abuses go unpunished, even in the face of massive evidence, the potential for significant, long-term change is not bright.

The Commission on Investigations

In an effort to address these problems, the Salvadoran government has established, with U.S. assistance, The Commission on Investigations, which oversees a special investigative unit and forensic laboratory. Unfortunately, the promise which the

Commission and its staff hold for human rights progress in El Salvador has not yet been fulfilled.

By a quirk of law, all members of the special investigative unit must be drawn from the security forces. El Salvador's Constitution requires that evidence introduced in Salvadoran courts be produced by judges or by auxiliary organs of the judiciary. The auxiliary organs listed in the current law are the security forces: the National Police, the Treasury Police, and the National Guard. Because the National Assembly did not designate the Commission as an "auxiliary organ," evidence produced by the Commission's special investigative unit will be admissible only so long as the investigators remain salaried employees of the security forces. This gerrybuilt method of solving an otherwise minor legal problem guarantees the security forces a role and probably a veto in every investigation undertaken by the special unit.

In addition, it is generally recognized that the investigators' long-term hopes of advancement lie within the security forces. Because of the special unit's size and the investigators' status as security forces employees, it is almost certain that the investigators will eventually return to the main security forces to advance up a career ladder. In keeping with this expectation, the security forces continue to pay the investigators' base salary and preserve their retirement and advancement rights. Not surprisingly, the special investigative unit has functioned virtually as a part of the security forces in each of its major cases.

The human rights cases originally identified by President Duarte and subsequently taken up by the Special Investigative Unit including the Archbishop Romero assassination and the Las Hojas massacre have been supplemented with other notorious crimes, and all of these cases have been taken up for of investigation.

Despite this air of activity, human rights cases seem to have been relegated to the lowest rung on the Commission's priority ladder. In our recent report, From the Ashes, we note in particular the AIFLD murder case in which two U.S. labor advisors were assassinated at the Sheraton Hotel in San Salvador. The Special Investigative Unit's failure to help resolve the AIFLD case or to help prevent the recent dismissal of all of the defendants in the Los Hojas case which I discussed above are illustrative of its ineffectiveness in dealing with any sensitive political cases.

Handling of National Security Cases

Another area of concern the the Lawyers Committee involves the treatment of those who are accused of national security offenses. In the past few years these cases have been handled under so-called Decree 50, a provision that was enacted in February 1984. Designed to ameliorate the harshest aspects of earlier provisions governing political crimes (specifically Decree 507), Decree 50 had the unfortunate effect of encouraging coerced confessions. These coercive practices generally occurred during the first fifteen days of administrative detention, during which period security forces are permitted to hold suspects without charge and without access to defense counsel. The Decree 50 system provided little security for the judges, but ample opportunity for informal and questionable contacts between judges and the security forces.

In February 1987 Decree 50 lapsed on its own terms. Several weeks later it was replaced by a new decree, #618. Its key provisions are identical to Decree 50. In January the Revisory Commission circulated a draft law which was proposed as a substitute for Decree 50. The proposed draft contained a number of progressive amendments. It provided, for example, for two levels of review by civilian courts of military court decisions. It also provided a series of specific rights to defendants at the time of detention. Despite these and other crucial reforms, the draft was completely ignored when Decree 618 was passed in mid-March. In addition, Decree 618 was passed despite the fact that its key evidentiary and detention provisions depend on there being a state of emergency, which was not and still is not in effect. As enacted in March, Decree 618 does not correct the existing problems which have plagued national security cases in the past.

In the past year, the security forces of El Salvador continue to use torture and coercion to obtain confessions or information in the context of these security cases. As we concluded in From the Ashes, beatings, blindfolding and threats are not uncommon at the moment of arrest. For the first one or two weeks after arrest, prisoners are cut off from the outside world. During this period of incommunicado detention, detainees often receive direct and explicit death threats, aimed at the prisoners and their families.

Among the forms of physical abuse that have been reported to the Lawyers Committee are electric-shock treatment, physical beatings, the "hood," an airtight bag that is fastened around the prisoner's neck until he or she blacks out, deprivations of food and water, and rape.

To reduce the opportunity and incentive for such abuses, the Lawyers Committee has recommended that the following measures be incorporated into legislative and administrative procedures:

> a. The International Committee of the Red Cross (ICRC) should be permitted immediate access to interview and determine the well-being of every prisoner held by the Salvadoran security forces. Immediate access would prevent unsupervised detention, and protect the safety of political prisoners.
>
> b. The security forces should adopt internal procedures to assure the physical well-being of prisoners. Specifically, prisoners should receive prompt medical examinations by doctors not employed by the security forces and their reports should be given to a civilian agency and not to

the security forces employees on the spot. The records of these examinations should be available to the ICRC. Similarly, procedures should be established for investigating and punishing rape and other mistreatment of prisoners.

c. Extrajudicial confessions obtained by the security forces from political prisoners should be inadmissible in judicial proceedings if they are not supported by independent evidence.

d. Political prisoners should be permitted access to legal counsel of their choice, and permitted to exercise legal remedies to guarantee basic due process protections.

To date, none of these proposals have been adopted by the Government of El Salvador.

Mr. Chairman my testimony has focused on the breakdown of the rule of law in El Salvador, and the failure of governmental institutions to protect basic rights. Most troubling in this regard is the fact that El Salvador's establishment has not convincingly repudiated the bloody tactics of the early 1980's. Whether this past is a fair guide to the future of human rights in El Salvador depends on the political will of those in power.

Resolution of these problems is central to the well-being of ordinary Salvadoran citizens, including those returning from the U.S. and other countries. Until institutions of government, including the courts, offer protection to Salvadoran citizens, including political opponents of the government, the refugee crisis will continue; and it will be vital for the U.S. to respond to these people in a humanitarian manner that is consistent with our commitment to international human rights.

MP/420

STATEMENT OF

MORTON H. HALPERIN, DIRECTOR

WADE J. HENDERSON, ASSOCIATE DIRECTOR

AND

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ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

DISPLACED SALVADORAN REFUGEES

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to present to this Subcommittee the views of the American Civil Liberties Union concerning the deportation of Salvadoran nationals to El Salvador; the conditions that these deportees encounter when returned; and S. 332, which calls for the temporary suspension of deportation of Salvadoran nationals from the United States. The American Civil Liberties Union is a nationwide, non-partisan organization of more than 275,000 members devoted to protecting the Bill of Rights.

America's immigration and refugee policies have become the subjects of passionate debate in recent years. However, few issues within the immigration debate have generated more concern and compassion than the growing number of Salvadoran nationals here in the United States. Many persons believe that because of the human rights situation in El Salvador many displaced Salvadoran nationals are bona fide refugees in need of governmental protection. But many others including the United States government regard these same Salvadorans as merely undocumented workers in search of employment here in the United States.

Last session the Congress passed a sweeping new immigration law. The Immigration Reform and Control Act of 1986 (IRCA) was intended to address the problem of illegal immigration to the United States through a combination of civil and criminal penalties for employers who knowingly hire unauthorized workers and a legalization program for certain undocumented aliens. Although the new law provides the hope of legalization for undocumented persons who have resided in this country since January 1, 1982, as well as certain agricultural workers, most Salvadorans entered after 1982, reside in urban areas, and are not covered by these legalization programs. Consequently, IRCA has had particularly significant impact on an estimated population of 500,000 Salvadoran nationals in this country as the employer sanctions provisions have made it increasingly difficult for some to work.

The ACLU believes that, notwithstanding the new immigration legislation, it is urgent to seek to develop a national consensus on legislation to provide a temporary safe haven for eligible Salvadorans in the United States which is consistent with our national commitment to refugee protection and the protection of internationally recognized human rights. Such a policy could be implemented administratively by granting a status known as "extended voluntary departure" (EVD) to Salvadorans. This status has been used in the past to allow citizens of countries which are experiencing dangerous conditions to remain in the U.S. temporarily and obtain permission to work. Granted at the discretion of the Attorney General, upon the recommendation of the Secretary of State, extended voluntary departure status is revoked once hostilities have ended in the alien's country and safety has been restored. However, the Administration has forcefully declined to extend this position to Salvadorans.

The ACLU has a number concerns with the undocumented Salvadoran population in the United States: (1) We are deeply troubled by the widespread violence against the civilian population of El Salvador and remain concerned about the consequences to those persons who might be deported to that country; (2) We are strongly committed to the rule of law, and are concerned by the apparent discriminatory application of our nation's asylum and refugee laws on the basis of extraneous, political or non-humanitarian considerations; and (3) We are troubled that many Americans, acting from conscience, feel compelled to engage in acts of refugee protection which are construed by the government as violations of the criminal law.

S. 332 is a modest device for accomplishing a limited but essential humanitarian purpose. The American Civil Liberties Union urges that the bill be promptly reported with a favorable recommendation.

The Human Rights Situation in El Salvador

Human rights abuse remains a central issue in El Salvador. Although there has been a marked decline in some kinds of human rights abuse -- notably the previously widespread disappearances and extrajudicial executions -- in large part due to U.S. pressure, El Salvador continues to be wracked by a civil war that is characterized by a startling degree of danger and brutality. The principal victims of this civil war are innocent civilians. Reliable estimates of the number of civilians non-combatants killed now exceeds 60,000 persons since 1979.[1] The significance of this figure can only be appreciated if one recalls that the total population of El Salvador numbers fewer than 5 million, and that the geographical size of El Salvador is roughly equivalent to that of the state of Maryland.

Documentation of the severity of the human rights situation in El Salvador is thorough, credible and extensive. Amnesty International, the widely respected human rights monitoring organization, has documented the atmosphere of violence which characterizes life in El Salvador. In its 1986 report on El Salvador, Amnesty states that "arbitrary arrest, torture, 'disappearance' and extrajudicial execution of people from a wide cross-section of Salvadoran society" continue, only "more selectively directed against people suspected of opposition to the government or of being sympathetic to the opposition."

> Trade unionists, human rights activists, and those working with refugees were particularly subject to such abuses in 1985. Others appear to have "disappeared" or been arbitrarily killed simply because they were present in areas where security operations were taking place.[2]

Amnesty International also reports the prolonged detention without trial for periods of up to five years of several hundred political prisoners and continuing reports of the systematic use of torture to extract confessions from new detainees. In addition, there is a new pattern of short-term detention of opponents of the government, apparently as a form of harassment, and the Salvadoran judicial system continues to be unable to investigate and punish violations of human rights.[3]

Commenting on the failures of the Salvadoran judicial system, the Lawyers Committee for Human Rights recently issued a new study, noting:[4]

> [t]he current system seems tolerable only when compared to the horrors it has replaced. Coercive interrogation, sometimes including physical torture, continues to be standard operating procedure for the Salvadoran security forces. Relay questioning, deprivation of food and water, death threats, beatings, and sometimes worse are used to obtain false extrajudicial "confessions," and the confessions are used to justify extended pre-trial detention of political and non-political prisoners.

Moreover, the Lawyers Committee concluded:

> El Salvador's establishment has not convincingly repudiated the bloody tactics of the early 1980's. The security forces in El Salvador are slow to pursue crimes and human rights abuses on the part of the government. Officers of the security forces -- even those who participated in brutal political murders -- are virtually immune from successful prosecution. These crimes go unpunished even in the face of massive evidence, and efforts to investigate government and right-wing crimes from that period have been thwarted by indifference.

Americas Watch, another reliable source on the human rights situation in El Salvador, recently reported:[5]

> Violations of human rights have become routine in El Salvador. Death squad killings and disappearances continue and violence, forced relocation, and terror against noncombatants by the armed forces appear to be official policy or officially condoned. Human rights conditions in El Salvador may be said to be "improved" to the extent that political killings by agents of the government do not number 1,000 or so per month as they did in 1981, and larger-scale massacres where hundreds of civilians are slaughtered by the army do not occur, as they did in the early 1980's. The fact that these horrifying levels of violence have diminished, however, does not mean that El Salvador's human rights problems are over.

Furthermore, the Department of State Country Report on Human Rights Practices for 1986 also demonstrates that the Salvadoran human rights situation remains serious. It admits that politically motivated, occasional noncombatant killings and torture attributed to members of the government's security forces continue. In fact, it concedes that "no military officer has been convicted of human rights violations in recent years."[6]

The report also acknowledges allegations of deprivation of food and sleep, threats against detainees and their families, prolonged interrogation while blindfolded, forced exercise and blows to the ears, and forced "confessions." In addition, the Department reported "isolated instances of severe beatings, rape, choking, electric shock, and near-suffocation with a plastic bag over the head." Moreover, only about 9 percent of the people in prison are serving sentences, the remainder are in pre-trial detention.

On March 11, 1987, the United Nations Human Rights Commission overwhelmingly passed a resolution condemning the Salvadoran human rights situation. The Commission expressed its "deep concern for the fact that there continue to be serious and numerous violations of human rights in El Salvador," and criticized the judicial system as "notoriously unsatisfactory" in investigating human rights abuses and in trying and punishing those responsible. Only days later, following an intensive government aerial attack in San Miguel province which killed seven civilians, the Commission added a statement denouncing the non-combatant deaths and serious injuries.[7]

In addition, recent news reports seem to indicate an increase in the level of violence and the activities of the opposition forces. On May 29, 1987, the Los Angeles Times reported that "[t]argeted political violence appears to be rising again in the capital, where guerrillas of the Farabundo Marti National Liberation Front have returned to political organizing and urban warfare."[8]

On June 4, 1987, the Christian Science Monitor similarly reported the rising level of violence and tension, and a resurgence of death squad activity, noting that (1) leftists had burned buses, (2) that the offices of the Committee of the Mothers of Political Prisoners, Assassinated and Disappeared had been bombed and people injured, (3) that gunmen launched a raid on chapel of the Lutheran Church, and (4) that a peasant union leader had been captured and beheaded.[9]

Additionally, a major earthquake in San Salvador last year has dramatically increased the human suffering of the Salvadoran people, leaving hundreds of thousands of people homeless and damaging the homes of many more. Noting this new tragedy in combination with the "prolongation of the conflict," "the lack of job opportunities," and the "spectacular drop in prices of export products," Salvadoran Archbishop Rivera Damas cautioned that a massive return of Salvadorans from the United States at this time would likely lead to a deterioration of that nation's tenuous human rights situation which "has been achieved with great effort." Thus, he writes, "we believe that this extension [of voluntary departure] is necessary today more than ever."

The Reagan administration has repeatedly argued that this legislation is not necessary for Salvadorans not only because they do not face serious human rights threats in El Salvador, but also because the asylum and withholding of deportation provisions in the immigration law provide adequate protection for those who are truly endangered. Thus, the INS has pursued a policy of deporting Salvadorans to El Salvador unless they can meet the stringent standards of proof necessary to obtain political asylum in the United States under the Refugee Act of 1980.

The asylum process, however, cannot adequately protect all those who legitimately fear returning to El Salvador. First, the asylum statute is not designed for, and, in fact, excludes all those who fear random violence and civil strife inflicted by war. Second, the U.S. Immigration and Naturalization Service and Department of State have been criticized for unfairness in the adjudication of political asylum claims by Salvadorans.

Even an internal INS report admitted that there is a double standard:

> different levels of proof are required of different asylum applicants. In other words, certain nationalities appear to benefit from presumptive status while others do not. For example, for an El Salvadoran national to receive a favorable advisory opinion, he or she must have "a classic textbook case".[10]

At the request of Senator Arlen Spector (R-PA), the Government Accounting Office conducted an extensive study of the asylum adjudications process and released its findings in January, 1987.[11] Whereas 49% of the Polish asylum applicants and 63% of Iranian applicants were granted asylum, only 2% of the Salvadoran applicants and 7% of the Nicaraguan applicants were successful. The report also found that Salvadoran applicants who claimed they were arrested, imprisoned, had their life threatened, or were tortured, had only a 3% approval rate in comparison with 7% for Nicaraguans, 55% for Poles, and 64% for Iranians making similar claims.

In addition, whereas none of the unsuccessful asylum applicants from Poland, Iran, or Nicaragua were ultimately deported -- and thus benefited from a de facto EVD status -- 212 of the unsuccessful Salvadoran asylum claimants were later deported. Finally, finding that "73% of the [INS] files did not contain any explanation of the decisions beyond the determination that the applicant had or had not met the statutory standard for asylum eligibility," the GAO concluded that "it is uncertain as to whether all applications were treated fairly and were held to the same standards." In our view, the statistics speak for themselves and strongly suggest the application of inconsistent standards.

Third, the asylum process has been thwarted by INS officials who have deliberately and systematically discouraged and interfered with Salvadoran applicants for asylum.

In Orantes-Hernandez v. Meese (No. CV 82 1197 Kn) an ongoing federal trial in Los Angeles, Salvadoran plaintiffs seeking to improve the conditions of their detention and ensure access to legal assistance regarding their right to apply for asylum presented shocking testimony of attempts by the INS officers to coerce, cajole, and mislead Salvadorans into waiving their legal rights. The testimony described practices of detaining Salvadorans to force them to sign "voluntary" departure agreements and putting detainees in isolation cells as punishment for their refusal to sign. Routine transfers to isolated INS detention centers where there are few attorneys to assist them prepare asylum requests were common.

For example, one woman who fled to the United States after her husband "disappeared" and her daughter was raped by government soldiers and later also disappeared, testified that she told an immigration officer that she wanted to see a judge. He told her she was not going to appear before a judge, insisted that she sign deportation papers, and took her hand and made her sign crosses. She was then put on a late night flight to San Salvador.

Granting a permanent injunction prohibiting such practices until the litigation is finally concluded, U.S. District Judge Kenyon characterized these actions as "coercive", and "carried out by the INS with little or no regard for the procedural or substantive rights of aliens under United States immigration law."[12]

Despite the voluminous record in Orantes, the Administration has continued to defend the criteria for asylum as necessarily strict and in compliance with international standards established by the UN Protocol Relating to the Status of Refugees. We disagree. While the definition of "refugee" for the purpose of granting permanent resettlement derives from the Refugee Protocol, the standards of proof applied by the United States are consistently more stringent than those of other nations which utilize this same definition.

In a landmark decision in March 1987, the U.S. Supreme Court in INS v. Cardoza-Fonseca[13] struck down the INS interpretation of the standard of proof asylum applicants had been required to meet as being inconsistent with congressional intent, the plain meaning of the refugee statute, and international practice. The decision may permit thousands of asylum seekers who previously lost their cases to reopen their claims and has raised the hopes of other refugees who desire asylum but have been too frightened to come forward to apply. However, because the Attorney General is vested with broad discretion to deny asylum requests and the Department of State plays a disproportionate role in advising the INS in every asylum case, decisions issued since Cardoza-Fonseca still reflect resistance to granting asylum to Salvadorans in meritorious cases and reveal denials based on hyper-technical grounds even when the correct standard of proof is applied.

For instance, in Campos-Guardado v. INS,[14] the Fifth Circuit recently held that, notwithstanding application of the proper standard of proof, a Salvadoran woman who was abducted and forced to watch the brutal political executions of her uncle and cousin, who was herself raped at the same time and who was later tracked down and repeatedly threatened with death by her assailant was denied asylum because, even though her testimony was credible, she had failed to provide proof that her harm was "on account of political opinion." If this individual's experience is indicative of future asylum decisions, it is unlikely that Salvadorans will fare much better even under the Supreme Court's more liberalized asylum standard.

Finally, the Administration frequently asserts that the Refugee Act of 1980 was intended to be the sole relief available to persons fleeing dangerous conditions in their homelands. This argument is entirely disingenuous. In enacting the Refugee Act of 1980, the Congress did not address the conditions nor standards to be applied for determining when in emergency situations foreign nationals in the United States are entitled to the special humanitarian relief of extended voluntary departure

(EVD). However, it is clear that Refugee Act's enactment was not intended to end and has not curtailed the grant of EVD when circumstances demonstrate the need for such temporary protection. Indeed, this Administration has granted extensions of EVD status to nationals of Ethiopia, Afghanistan and Poland twice each year since 1981 and only recently terminated a grant of EVD for Ugandans which had been in effect for several years.

The Administration argues that the Salvadorans who do not qualify individually for asylum under the extremely strict standards of proof have nothing to be afraid of and may safely be returned to El Salvador. The Administration supports this conclusion on the premise that no evidence exists that persons have been persecuted in El Salvador _because_ they were deported from the United States. This argument is a red-herring. There is substantial evidence that persons have been persecuted in El Salvador _after_ their forced return from the United States.

Despite the difficulties of acquiring information about the fates of deportees, there is a significant quantity of proof that deported persons have been victims of persecution in El Salvador. As often noted, the ACLU documented cases of death and disappearance of returned Salvadorans from public record sources which were published in Appendix III of the ACLU Public Policy Report, _Salvadorans in the United States: the Case for Extended Voluntary Departure_ and presented its evidence to the Bureau of Human Rights and Humanitarian Affairs.

More than a hundred other cases were later identified in a study by the Political Asylum Project of the American Civil Liberties Union of the National Capital Area and were shared with to the Department of State and Immigration and Refugee Subcommittees of the Judiciary Committee in both houses of Congress in 1984.

We did not intend to conduct a definitive study; nor did we make any independent inquiries into the welfare of those deported. Rather, we checked the names of deported Salvadorans against the records of Salvadoran human rights victims which we had already compiled in our office. We were alarmed by our findings. We identified 112 likely cases of persecution, including 52 political murders, 47 disappearances, and 13 unlawful political arrests. As to the 7,400 other deportees whose names we obtained, we have no information regarding their welfare or fates: our records do not include the names of tens of thousands of Salvadorans who were victims of political persecution or other types of violence related to the armed conflict, such as death or injury caused by aerial bombardment, land mines or stray bullets. We also do not have the names of the nearly 700,000 persons who have suffered other types of harm such as forced displacement from their homes or psychological trauma. Consequently, they may be dead or alive, injured, displaced from their homes, or refugees in other countries. The fact that our office files do not contain records of persecution to them does not establish their welfare and cannot be interpreted to mean they have suffered no harm.

The Department of State was apparently impressed by our report, for the U.S. embassy in San Salvador took twenty-five names from our list and sent them to Socorro Juridico and Tutela Legal, two Salvadoran human rights monitoring agencies, for verification, conducted its own study, and subsequently contracted with the Intergovernmental Committee for Migration to meet, counsel, and track deportees.

As a result, there is substantial recent evidence that persons have been persecuted in El Salvador after their forced return. Contrary to the Department of State's assertions that returned Salvadorans had not reported a single case of political persecution to the Intergovernmental Committee for Migration to the (ICM), a General Accounting Office[15] study released in May 1987, concluded that many Salvadoran returnees have indeed experienced personal security problems.

Specifically, the GAO states that ICM's records show that 70 Salvadoran returnees reported personal security problems, the category in which ICM classifies reports of threats or violence.

ICM found 271 Salvadorans who reported that they were experiencing problems which ICM thought might be related to personal security. Fifty-four of these individuals, however, could not be located. ICM records also indicate that 9 of the returnees have died, at least three of which suggest that personal security factors might have been involved.

More importantly, however, ICM's methodology does not provide conclusive information as to the status of returnees or track whether they have been persecuted. ICM's data collection methods, for instance, do not clearly request information about security problems and do not promise adequate confidentiality of such sensitive information. In addition, the GAO commented that there exists a "reluctance among Salvadorans to report potentially sensitive information," and that most "U.S. and Salvadoran officials we contacted believe that most Salvadorans would not readily share sensitive information about themselves in an effort to avoid undue attention from either government security or guerrilla forces."[16] The GAO concluded that "a comparison cannot be made of the problems encountered by returnees versus the general population in El Salvador," and ICM's data "cannot be used to estimate the overall incidence of violence or persecution to Salvadoran returnees." ICM has acknowledged and concurred that it would not be a "proper interpretation of their data to say that they have found no cases of persecution among returnees."

In conclusion, we categorically reject the Adminstration's assertion that there is no evidence about danger faced by deported Salvadorans. The record now assembled suggests that the cases identified by these studies are just the tip of the iceberg. Moreover, the general conditions of war violence against civilians continues to extract a heavy toll. Together, these conditions justify suspending the deportations of Salvadorans until it can be demonstrated that they can return to their homeland without endangering their personal safety.

The Motivation for Migration

The original motive for immigration to the U.S. is not relevant to the standards for granting extended voluntary departure. Extended voluntary departure has in the past provided humanitarian relief to precisely the type of population represented by the Salvadorans. That is to say, it has been granted to an endangered nationality, regardless of the original reason for an individual's entry into the U.S., when there is "widespread fighting, destruction and breakdown of public services and order" in the alien's country of origin.[17] The leading treatise on Immigration Law formulates the standard as involving ". . . countries undergoing active hostilities or other dangerous conditions."[18]

The Administration, however, continues to wrongly link "extended voluntary departure" for Salvadorans to the question of whether they individually meet the test for refugee status. This is done with the assertion that Salvadorans are economic migrants deserving no formal recognition or protection, presently because bona fide refugees, would have stayed in Mexico.

This test affords no fair assessment of a claim for protection. First, many persons of other nationalities who ultimately receive refugee here have also passed through other "friendly" nations on their way to the U.S. Second, Mexico does not subscribe to the U.N. Protocol and has no procedures by which a Salvadoran can apply for asylum. As noted in the Department of State Country Reports on Human Rights Practices for 1984, Mexico does not "regard them as refugees." Although many thousands of Salvadorans are illegally present there, last year Mexico deported 120,000 individuals demonstrating that it clearly is not the "safe haven" the Administration presents it to be.

Certainly, Salvadoran migration to the United States did not begin with the outbreak of overt civil war in El Salvador. However, the actual pattern of Salvadoran migration in prior years is difficult to assess because of a lack of reliable, nationality specific data for Salvadorans before 1976. According to congressional testimony presented by the U.S. Bureau of the Census, "Salvadorans began fleeing their country en masse in April, 1980 as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero." [19] It is generally accepted that between 300,000 to 500,000 Salvadorans now reside in the United States. But a special study prepared by the U.S. Bureau of the Census estimated that in 1980 only 94,000 Salvadorans lived here, 51,150 of whom were thought to be undocumented.[20]

Research completed at the Massachusetts Institute of Technology which examines Salvadoran migration the United States offers a particularly constructive contribution to the political debate. The work of doctoral candidate William Stanley appears to be the first empirical analysis of the motivation of Salvadoran migrants on the relationship between political violence in El Salvador and on migration to the United States. This research finds a "strong empirical evidence, based on the actual behavior of Salvadorans, that fear of political violence is the predominant motive behind the decisions of Salvadorans to migrate to the U.S. since 1979."[21] At minimum, this research adds to the already compelling case in support of protection for Salvadoran refugees.

Conclusions

One and a quarter million Salvadorans, a quarter of that country's total population, have been compelled to flee their homes since 1979. Hundreds of thousands of Salvadorans are displaced refugees throughout Central America. Approximately 300,000 - 500,000 have entered the U.S. over the last several years, the majority of these persons having done so without inspection. The figures on the disposition of the asylum applications of Salvadorans suggest that most will not qualify for relief from deportation on a case by case basis. Nevertheless, the extreme dangers and hardships faced by these people if they are returned to El Salvador induce in them an intense fear of deportation. They manifest, therefore, the same characteristics of docility, exploitability and unwillingness to cooperate with legal authority as the undocumented population which Congress recently saw fit to legalize. Over the long-term, this unchecked migration of Salvadoran nationals will produce precisely the "underclass" which U.S. immigration policy seeks to avoid.

The DeConcini bill, S. 332, is necessitated by the continuing refusal of the Executive branch to acknowledge that compelling humanitarian factors and sound immigration policy favor of a temporary suspension of the deportation of Salvadoran nationals. Congress and the President previously approved a similar approach in the State Department Authorization Legislation Public Law 98-164. That expression of support for an extended voluntary departure was never enforced.

The approach to political consensus through credible, independent fact finding is the backbone behind the DeConcini concept. The General Accounting Office would be used to assess the fates of deportees returned to El Salvador from the United States; the conditions of displaced Salvadorans in Central America; and the treatment of Salvadorans in the United States by our government in comparison to other foreign nationals during periods when these individuals have been provided administrative grants of extended voluntary departure under the immigration laws.

As we have noted, the purposes of the Refugee Act and those of a temporary device such as this are quite distinct. The Refugee Act provides for the admission of persons who have a well-founded fear of persecution on account of certain specified factors. When Congress passed the Refugee Act it was aware of the simultaneous and parallel existence of the practice of extended voluntary departure. While the legislative history of the Refugee Act indicates that Congress did wish to end the use of the parole power to permanently admit refugees from outside the United States, it indicates no intent to discontinue the practice of temporary suspension of deportation of specific nationalities for exigent humanitarian purposes. This is corroborated by the administration's own continued use, since passage of the Refugee Act, of "extended voluntary departure" to benefit, nationals from other countries.

Furthermore, it is clear that not all Salvadorans will qualify for asylum under the narrower grounds of eligibility for that relief. This does not detract from the very real dangers which will await them nevertheless upon their return to El Salvador. Nor is it desirable that they be encouraged to apply for asylum in order to protect themselves from deportation. The asylum adjudications system has been seriously backlogged. It is practical to remove inducements to ineligible persons to use the asylum process to protect themselves from deportation, particularly when the compelling nature of their fear of deportation suggests that they will use any available device.

We have witnessed in the last few years the spectacle of respectable, law abiding U.S. citizens being willing to violate the law because of their perception of duty to a higher moral and humanitarian imperative. The existence of "sanctuary" churches for the benefit of Salvadorans seeking "safe haven" indicates the extent to which failure to act on compelling humanitarian claims will continue to breed disrespect for the laws. The combined effect of this and the deleterious consequences of the existence of a large "underclass" of Salvadorans in our midst suggests that S. 332 offers an opportunity to do well by doing good; to serve the national interest while maintaining our proud humanitarian traditions accomplishes its essential humanitarian and pragmatic purposes in a benign manner. It requires no long-term commitments. It requires that the already substantial premises upon which it is based be studied and corroborated in a joint effort of the administration and the Congress. The American Civil Liberties Union urges prompt favorable action on S. 332.

NICARAGUAN AMENDMENT TO S.332.

There are approximately 200,000 undocumented Nicaraguans who have come to the United States in the last several years because of the on-going civil war. Although we have not studied the human rights situation in Nicaragua, we are aware of human rights problems in that country as verified from the same sources who report on conditions in El Salvador. Also, the continuing armed conflict in Nicaragua, as in El Salvador, takes a toll on the civilian population. Therefore, we understand that Senator Kennedy will offer an amendment to include Nicaraguans in S.322 and grant them suspension from deportation. The ACLU supports Senator Kennedy. We believe this is particularly important in light of the new immigration law (IRCA) whose employer sanctions provisions now prevent those who have fled the conflicts in these countries from efficiently remaining in the United States.

ENDNOTES

[1] This figure is an approximation of data from authoritative sources. The Annual Report of the Inter-American Commission on Human rights (organization of American States), dated September 1982, reports 35,000 political deaths in the three previous years. See also "...in the face of cruelty: The Reagan Administrations Human Rights Record in 1984", Americas Watch, Helsinki Watch, Lawyers Committee for International Human Rights, January 1984, Pg. 38.

[2] Amnesty International Report 1986, Pg. 153.

[3] Id. at 152.

[4] From the Ashes, A Report on Justice in El Salvador, Lawyers Committee for Human Rights, 1987, Pg. 2 - 3.

[5] Testimony of Aryeh Neier, Vice Chairman of Americas Watch, before the Subcommittee on Western Hemisphere Affairs, May 14, 1986.

[6] State Department 1986 Country Report, Pg. 489 - 496.

[7] The Alert, April 1987, Pg. 5.

[8] Los Angeles Times, May 29, 1987, Pg. 14.

[9] Christian Science Monitor, June 4, 1987, Pg. 11.

[10] Immigration and Naturalization Service. Asylum Adjudications: An evolving concept and responsibility for the Immigration and Naturalization Service. June and December 1982.

[11] GAO Report: Asylum: Uniform Application of Standards Uncertain--Few Denied Applicants Deported, January 1987, Pg. 1-4, 14, 25, Appendix II.

[12] Orantes-Hernandez v. Smith, 541 F. Supp. 351, 354 (C.D. Cal 1982).

[13] 55 U.S.L.W. 4313 (March 9, 1987).

[14] 809 F.2d 285 (5th Cir. 1987).

[15] GAO Report: Illegal Aliens: Extent of Problems Experienced by Returned Salvadorans Not Determinable, May 1987.

[16] Id. at Appendix I, Pg. 10.

[17] Salvadorans in the United States: The Case for Extended Voluntary Departure, ACLU Public Policy Report, April 1984, Pg. 35-37.

[18] Gordon & Rosenfeld, Immigration Law and Procedure, vol. 1, 5-48 (1982).

[19] Central American Refugees: Hearing Before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service, 99th Cong., 1st Sess. 99-27 (1985) (statement of Linda S. Peterson, representative of the Bureau of the Census).

[20] L. Peterson. Central American Refugee Flows: 1978 to 1983, U.S. Bureau of the Census. January 11, 1984.

[21] Central American Refugees: Hearing Before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service, 99th Cong., 1st Sess. 99-27 (1985) (statement of William Stanley, Dept. of Political Science, M.I.T.).

Senator DECONCINI. Thank you, Mr. Posner.

Mr. Conner.

Mr. CONNER. Thank you, Mr. Chairman.

My name is Roger Conner. I am the Executive Director of the Federation for American Immigration Reform. With me today is Simin Yazdgerdi, who is the Director of Government Relations for FAIR.

I wish to join with my fellow members of the panel in thanking the committee for conducting this hearing. I think the information being brought out is important. Hopefully, it will be useful to the committee in its deliberations. And I thank you for the opportunity to testify this morning.

The bill that you have before you, Mr. Chairman, is an immigration——

Senator DECONCINI. Mr. Conner, we will put in your full statement if you have one. You can summarize it.

Mr. CONNER. My statement has been previously submitted and I will highlight it for the Committee as opposed to reading it.

Senator DECONCINI. Thank you, sir.

S. 332 AS AN IMMIGRATION BILL

Mr. CONNER. The focus I would like to bring back to you is that this is an immigration bill. It is an immigration bill which comes at a time when immigration is at the highest level in American history in absolute numbers. Legal immigration is ranging from six to eight hundred thousand per year. Illegal immigration is adding hundreds of thousands to that figure each year.

The consequences for American citizens, that have not been discussed this morning, need to be brought back to your attention. The consequences for Americans, especially Americans at the bottom of the economic ladder, are greater competition in jobs, housing and social services. The Los Angeles Times has just revealed that there are over 200,000 people living in garages in Los Angeles—American citizens, some legal immigrants, living in garages with no plumbing, bare electric wires, no lights, not even a tight closure around the door when it gets cold. The reason they are being forced to live that way is because the flood of people into that community has been greater than the social service net, the housing market and the job market can absorb.

[Los Angeles Times article follows:]

LOS ANGELES TIMES

MAY 24 1907

Substandard Housing

Garages: Immigrants In, Cars Out

2707

By STEPHANIE CHAVEZ
and JAMES QUINN,
Times Staff Writers

For two years after journeying north to Los Angeles from central Mexico in 1982, Manuel and Josefina Acevedo were forced to share a series of cramped apartments with other families.

Eventually the young couple found a place of their own. But it was no dream home. It was a one-car garage behind a house in East San Fernando Valley.

Three years later they are still there, living with their 5-year-old son amid a few pieces of old furniture.

They have no plumbing. Their bathroom privileges in the house expire at sunset. They collect drinking water in jugs from a garden spigot. Electricity comes from two extension cords strung from the main house. They prepare meals on a hot plate.

'This Is My Calvary'

"Life in here is no good," Josefina Acevedo said of her $150-a-month home. "*Es mi Calvario*—this is my Calvary."

The Acevedos have been driven by poverty into the ranks of Southern California's garage people, a hidden legion of immigrants living in structures designed for automobiles, not humans

A systematic survey by The Times indicates that about 42,000 garages are sheltering about 200,000 people in Los Angeles County. In addition, an unknown number live in other parts of Southern California.

They lie in a swath of mostly low-income Latino neighborhoods from Sylmar through East Los Angeles into Long Beach, with pockets in the east San Gabriel Valley, central Orange County and San Diego.

Living in the structures are immigrants, most of them from Central America and Mexico, who have overflowed the region's cheap housing. Profiting from the situation are landlords who are violating laws governing sanitation, zoning and safety and adding as much as $450 to their monthly incomes.

Some of these black market homes have been remodeled. Others are simply garages. Most have no plumbing, no heating, no windows and drafty gaps around overhead doors.

Extra Inspectors

Officials in some communities have become alarmed. Santa Ana and South Gate have hired extra housing inspectors to evict hundreds of garage dwellers a year. Los Angeles, however, simply responds to individual complaints, with doubtful results.

The Times' count, based on checks at 500 houses, appears to be the first to be made countywide. Some experts said they were surprised by the large number but found it credible.

"It doesn't seem an unreasonable number," said William Baer, a USC expert on the "shadow market" that includes non-residential structures converted to housing. He noted, "That's a city larger than Torrance or Glendale."

"I would not have guessed it was that high, but . . . it's perfectly plausible," said Mary Lee, housing attorney for the Western Center for Law and Poverty.

"The low-income housing market is getting tighter all the time, but proving it is difficult," said James T. Minuto, who supervises housing studies for the Southern California Assn. of Governments. "People are falling out of the bottom of the housing market. And we are hearing about a very large shadow market."

The lack of government data has not kept the practice from being noticed by people in affected neighborhoods.

Since immigrants began moving into garages several years ago, her neighborhood has "changed so you would hardly recognize it," said Pacoima homeowner Marie Harris. "They cut down trees to plant vegetables in the yard, and they hang clothes on the fence. And people are always loitering."

Paramount mailman Gordon Hash has watched in awe for two years as immigrants have moved into 75 of the 376 houses he delivers to. Many ask him to post letters stuffed with cash to their homes in Mexico.

Such neighborhoods can change rapidly.

Garbage cans overflow. People congregate on streets and sidewalks. Cars, displaced from their own shelters, jam the streets.

Public health nurses, who see a cross-section of housing conditions of the poor, say garages, like slum apartments, spread intestinal ailments such as salmonella and shigella.

"Parasites, malnourishment, lice—it's all common," said nurse Rosa Perez-Minton.

Ditches Instead of Toilets

Nurses say the biggest problems stem from cold drafts, the lack of kitchen areas to properly clean, cook and refrigerate food, and the absence of bathrooms. Health officials say the most common complaint is of garage dwellers' using backyard ditches instead of toilets.

Virtually all occupied garages fail to meet requirements for ventilation and, because the overhead doors are often sealed, for multiple fire exits.

In the crudest of converted garages, safety violations are blatant. Extension cords, often the lone source of power, are draped across bushes and tree limbs and are exposed to wind and rain. Gas pipes are often laid on the ground, vulnerable to damage.

Kitchen appliances are commonly too close to combustible material. Sinks and toilets can lack vents to let sewer gases escape. Toilet drain lines often do not slope enough to permit waste to flow freely to the sewer connection at the house.

Firefighters must cope with a new category of blaze—the occupied-garage fire.

Los Angeles City Fire Capt. Anthony J. Pasqualone, stationed in Pacoima, said that elsewhere in the city a garage fire is not life-threatening. In his district, he said, "we go to a garage fire wondering how many people are living in it."

Pasqualone's station responded to 24 garage fires in 1985-86, double the number in the previous record-keeping year, he said.

In 1983 a child died in a garage fire that started when a space heater ignited. A few weeks ago a mother and child escaped unharmed when their Pacoima garage home was gutted by a fire caused by a candle on a countertop.

When a fire strikes an occupied garage, the dwelling is usually destroyed, officials said. Wall studs and ceiling joists are often exposed and have clothes hanging from them.

Before 1980, only a handful of garages in Southern California were used for rental housing, usually as temporary shelter for newly arrived immigrants.

In recent years masses of people have been propelled north by economic decline in Mexico and Central America and war in El Salvador, Nicaragua and Guatemala.

Cash-Strapped Immigrants

From his vantage point as a counselor at El Rescate, one of several storefront organizations in Los Angeles that aid newly arrived Central Americans, Ricardo Garcia has watched the tidal wave of cash-strapped immigrants.

To get to the United States, he said, they sold what they had or borrowed money.

Central Americans pay an average of $1,000—including about $400 to cross the border—to "professional guides" who advertise in their hometown newspapers, Garcia said. Mexicans pay somewhat less because they travel shorter distances.

Garcia said most of the 500 families and single adults counseled each month at El Rescate linger a few weeks in the crowded tenements of the Pico-Union neighborhood southwest of downtown.

Then, in search of jobs or living space, they fan out to find niches elsewhere.

"It's only after they find they have no choice that they decide to move into a garage," Garcia said.

They usually learn of garage vacancies from friends or relatives. Some see a handwritten advertisement on a bulletin board in a coin-operated laundry or a store. A desperate few simply knock and ask to rent the garage.

They turn to garages because the region's supply of cheap housing has failed to keep up with the demand created by this army [illegible] immigrants, housing experts say.

Even shoddy one-bedroom apartments rent for $300 or more a month, said Barbara Zeidman, director of Los Angeles' Rent Stabilization Division. Garages go for $200 or $300.

New immigrants, among the poorest of the poor, are overwhelmingly the most numerous users of the "shadow market."

Some chose a garage because at least it is private. Others have families too large to suit apartment landlords.

A few could afford an apartment but do not have the first and last months' rent plus security deposit that is typically required for an apartment. "I went to look and found one-bedroom apartments for $400," said Soledad Castillo, 38, a hospital worker who rents a $250-a-month unplumbed garage in Pacoima. "But without the deposit, it's impossible."

Mary Lou Villar, an attorney with the East Los Angeles Legal Aid Foundation, said many of her garage-dwelling clients have saved toward that elusive unshared apartment, "but they didn't ever seem to make it. They would send for relatives rather than rent an apartment."

Such was the case with Irma Portillo, a Salvadoran who has lived in a two-car Pacoima garage since 1982 with her three children, her late brother's two children and her mother.

In 1984, Portillo said, she had saved almost enough to rent an apartment. When her brother was killed in El Salvador, she used the savings to pay a "coyote," or professional guide, to bring the two nephews to Los Angeles.

Portillo earns $570 a month as a nurse's aide. She said her landlord responded to the two new residents by raising the rent by $100, to $300 a month.

"I know garages like this are illegal to live in," she said. "I know it is terrible, terrible in here. But where else can I go?"

The situation has attracted official notice only sporadically partly because advocates for the poor have been reluctant to make it a public issue.

Social activists said they see no possibility of alternative housing. If the public became inflamed about garage dwellers, said Lee, the

Western Center for Law and

Poverty lawyer, the result could be mass evictions, "and I don't see how we could gain from that."

"I don't report them all," because evictees might end up homeless, said Gayle Gutierrez, a public health nurse in East Los Angeles. "You sometimes decide they're cleaner and safer in a garage."

Occupied garages are usually hard to spot from the street because most are detached structures in backyards. Modifications such as windows and sealed overhead doors are often hidden with such cleverness that Los Angeles City building inspector William C[illegible]as calls them "masterpiece conversions."

Diego Vigil, a USC associate professor of anthropology, said his "eyes were opened wide" recently when he was hired by the U.S. Census Bureau to make a test count in a Pico Rivera census tract.

Vigil, a former counselor to gang members, said that by becoming friendly with residents he found 20% more people than census takers using standard methods had turned up a short time earlier.

Most of the uncounted were "hidden in structures behind the main house, mostly in garages," Vigil said. His report will go to officials planning the 1990 count.

Some cities are cracking down.

In Santa Ana, in Orange County, an estimated 800 garage families have been ousted in the last year. Officials say they have barely made a start. They have hired additional inspectors and expect a higher rate of evictions.

In the City of San Fernando, [illegible] the San Fernando Valley, a code enforcement officer has been hired to investigate the 20 garage complaints each month from the city's 20,000 residents, City Manager Donald E. Penman said.

In Lynwood, population 55,000, officials have stepped up enforcement after being swamped by nearly 300 complaints in eight months.

"In one case, one of our men went out on a complaint, and he found seven other converted garages on the same block, and all of them were obvious," Public Safety Director Ronald W. Lathrope said. He said he could not estimate how many of Lynwood's 9,000 single-family houses have occupied garages.

Officials in Anaheim, Long Beach and Huntington Park each report about 20 complaints a month.

Most notably, in South Gate, south of downtown Los Angeles, more than 1,000 families have been evicted from garages in the last three years, city officials said. City surveys point to about 4,000 remaining occupied garages housing about 20,000 people—about one of every five of the city's residents.

Five full-time inspectors do the work, and they do not wait for complaints. Seven days a week, said Building Director Mark Sutton, they are on the street looking for telltale extension cords, burglar bars on garage windows, sealed-up overhead doors, sewer vent lines, outdoor water heaters, second television antennas. The annual cost to the city: $350,000.

Homeowners go to great lengths to camouflage their bootleg rentals, said South Gate inspector William Campagna, who served notices on 10 landlords one day while accompanied by a reporter.

One stunned landlord's occupied garage was spotted only because, just as the inspector drove by, the homeowner's sons lifted the garage door to get at their barbells—and revealed a second wall six feet inside. The ruse is increasingly used by landlords aware that a sealed-up overhead door can sometimes be spotted from the street, Campagna said.

Sutton said clearing the remaining occupied garages will take at least five years. By then, he said, "we may have to start over on quite a few of them."

South Gate's consensus in favor of mass evictions grew out of an unusual political scenario.

A working-class city of well-maintained homes between the Harbor and Long Beach freeways, South Gate has represented a step up from poor Latino barrios for decades. Although South Gate, which is 70% Latino, is part of the mammoth Los Angeles Unified School District, a prime lure is the quality of local schools, particularly South Gate High School, Mayor Henry Gonzalez said.

Several years ago there was an uproar. Parents were told that the high school was overcrowded and that many students would be bused to Jordan High School in Watts.

The official population of 76,000 had grown only slightly. "Everyone demanded to know where the new students came from," Gonzalez said. The answer, city officials concluded, was occupied garages. School officials disclaim knowledge of the causes of the crowding, and no one knows how many of the 368 high school students being bused live in garages. In any case, garage living got the blame.

The evictions that began in 1984 have "incredibly widespread support throughout the city," Sutton said. "And without that support we couldn't be carrying out the program."

In April, 1986, three City Council candidates who supported garage evictions were elected. They easily outdistanced a fourth who wanted to halt the program.

Groups supporting the evictions include the South Gate Ministers Assn. "Displacing people is wrong," said the Rev. Ben Vinluan, a Methodist minister who heads the group. But he said it is a greater wrong to have "illegal aliens living in your garage to collect money."

Of course, evicted residents have to go somewhere. Where is anybody's guess. No city has tried to track them, much less provide alternative housing.

"Those are not things within our control," said Rex Swanson, Santa Ana deputy city manager. "Such solutions would have to come from the federal or state governments. We can only enforce our building and zoning laws."

"The tenants? I don't know where they move," said James Funk, the Huntington Park building director. "They probably are moving to South Gate."

In South Gate, Sutton said, "We tag them, and they vanish. We don't know where they go. They probably go to Cudahy, Compton or Lynwood."

Garage living does appear to be largely confined to Southern California.

Lupe Castillo, a legal worker with the Tucson (Ariz.) Ecumenical Council's Legal Assistance program, reported "lots of doubling and tripling up in houses and apartments, but no one in garages."

One possible reason is that Tucson has mainly carports. But her comments echoed those of immigration assistance workers in Dallas, Houston and Phoenix—all cities with large numbers of Latin American immigrants. A few people have started living in garages in San Francisco, said Oscar Herrera, who directs a Central American refugee program there.

In Tucson most Latino immigrants are "in transit and don't stay here very long," Castillo said. Their destination? "Almost always, it's Los Angeles."

Los Angeles' city government appears to represent an exception to the growing official concern in Southern California.

Robert Steinbach, chief inspector for the city's Conservation Bureau, said his office receives a "few complaints now and then about occupied garages" but does not count them. He termed the situation "not a real horrendous problem yet."

Steinbach's 25 inspectors must deal with all residential building and zoning problems and respond only to complaints, he said, never canvassing neighborhoods in search of violations.

'Risen Slightly'

Interviews with inspectors point to mounting concern in neighborhoods. Eight occupied garages in three blocks on Kewen Avenue in Pacoima were anonymously reported on one day last year. Thirteen are under investigation on Arminta Street in Sun Valley.

Steinbach acknowledged that in the last year complaints "appear to have risen slightly" and that, because of the increased workload, the city has become slower in responding.

Delays of six weeks to four months are common, records show. And the process of securing compliance from garage landlords is anything but swift and sure.

Typically, inspectors leave a notice on their first visit telling a landlord he is permitting occupancy of a structure not approved for habitation and ordering eviction in 30 days.

Months, sometimes years, can pass before a landlord is formally accused of a misdemeanor for which he could be fined. If the homeowner ignores the citation, it can be two years or more before the case is turned over to the city attorney's office for prosecution.

Said one inspector: "If I was trying to outwit the law, I wouldn't be nasty or rude, but I wouldn't let anyone on my property and I wouldn't abate. I would do nothing. The system relies heavily on voluntary compliance."

Even a landlord whose case is ultimately turned over to prosecutors can have a misdemeanor charge of maintaining an illegal occupancy dropped by complying "right up to the time the case gets to a judge," said the inspector. He attributed the city's reluctance to prosecute to an "incredible workload."

Once a landlord complies, Steinbach said, "he usually doesn't do it again. But he sells the house to someone else who does the same thing."

Some of the hardships suffered by garage people are readily detectable. Others are more elusive.

Many adults are so ashamed of their garage homes they "do not want you to see where they live," said Becky Gaba, who aids garage dwellers as a volunteer with several San Fernando Valley churches. "I wonder what it does for them to realize they are below the bottom rung on the ladder."

In an interview arranged by a refugee counselor, an 18-year-old woman said that for her family the transition from a house in Nicaragua to a garage in Huntington Park has been "psychologically very hard."

Her mother and father's savings were nearly depleted after the family spent $1,500 each to fly from Managua to Tijuana, then $400 each to a guide to bring them across the border.

A robber in Tijuana relieved them of what money was left—and of the last chance that they might have been able to afford conventional housing in this country.

'I Am Ashamed'

"In Nicaragua we had a house, a TV. I had a bedroom," the daughter said. "Now I cannot tell anyone where I live because I am ashamed."

Her face flushed as she added: "My father had to build a bathroom for us outside."

School officials say self-esteem among garage children seems to slip away as they grasp the reality of their social position.

Many conceal where they live, said Ricardo Sosa-Pavon, principal of Sharp Elementary School in Pacoima, where about five children per classroom live in garages.

Very young pupils seem to be only slightly aware of their humble homes, he said. But on television, they see children living in "houses with rooms and with bathrooms." By fifth or sixth grade, their self-image has been dealt a fatal blow, he said, "and when that happens, you can throw education out the window."

Mirla Garcia, 10, until recently lived with her mother and three siblings in a series of San Fernando Valley garages. She would tell her classmates that she had "lots of TVs and lived in a big house," she said.

One day a friend insisted on visiting her. She was forced to reveal her secret. Her worst fear was realized when word spread.

Mirla, who spoke in English so her mother would not understand, said that thereafter schoolmates mocked her as a "poor girl because I lived in a garage with nothing in it."

Mirla's family recently moved into an apartment with another family on one of the most drug-ridden streets in the San Fernando Valley. But she is happy there.

"I like the apartment because I can take a bath whenever I want," she said. "Someday I'm going to live in real big house."

Recently a sixth-grade student at Telfair Elementary School in Pacoima smelled so foul that classmates asked not to sit next to him, teacher Linda Witham said.

After numerous complaints, Witham and a school nurse visited the boy's home, a garage without plumbing. They found the boy sleeping on the floor in clothes he had soiled.

"We told the mother she would have to find a way to clean her child, even if she had to bring him to the school to do it," the teacher said.

But the boy never went back to school.

Garage tenants have legal as well as psychological handicaps. They are almost guaranteed to lose when they clash with their landlords.

Theoretically, they have the same rights as all renters, including advance warning of eviction and habitable quarters.

But the law is all but useless to garage tenants, Legal Aid lawyers say. A 1978 state Court of Appeal opinion said a rental agreement is not enforceable unless the dwelling has an occupancy permit.

"The law is clear," said attorney Roderick T. Field of Legal Aid's eviction defense center in Los Angeles. "If you are living in a unit without certification of occupancy, the landlord can evict you whenever he wants."

An evicted garage tenant is not covered by a Los Angeles law that requires a landlord to pay $2,500 to a family whose apartment is ruled uninhabitable. Zeidman, director of the city's Rent Stabilization Division, said a garage tenant "has in effect conspired with the landlord to commit an illegal act by living in a garage."

Landlords who do not want to dirty their hands with a conventional eviction need only report the illegal occupancy to the Building Department—in effect, turn themselves in. Armed with an inspector's order to clear out the garage, a landlord can painlessly and promptly rid himself of unwanted tenants.

Ruth Levia, a paralegal at San Fernando Valley Neighborhood Legal Services, said landlords regularly use this ploy to get "an eviction without any fight at all."

On the other hand, tenants sometimes get their shots in too, especially after they have been evicted.

Los Angeles city building inspector Casillas said that up to 40% of the illegal garage conversion complaints in his east San Fernando Valley district are telephoned in by disaffected tenants.

Garage landlords, for their part, tend to depict themselves as entrepreneurs. Some say they are providing desperately needed shelter for those who would otherwise be homeless. Many insist that they rent only to relatives or friends.

Property owner Luz Montero of San Fernando was outraged when a San Fernando code enforcement officer cited her recently for renting a garage to tenants who she said could not afford an apartment.

"I don't know what the big deal is," said Montero, 27. "They don't bother anyone. Everyone around here rents their garages. People need a place to live."

In Santa Ana, 72-year-old Evelyn Ayon said she rents her garage and basement because "I need the money. I can't get by only on Social Security."

For retired municipal employee Jose Corrales, the possibility of cashing in on his garage and large backyard in Pacoima became irresistible a few years ago.

Corrales, 63, sealed up the overhead garage door, parked three aging house trailers in the yard and built an outhouse.

He acknowledged that before a building inspector closed it a year ago, his backyard shantytown was bringing in $400 a month.

Does he miss the extra money?

"Well, I used to eat big chunks of steak," he said, laughing. "Now I eat hamburger."

A garage tenant in Arleta is on the verge of becoming a garage landlady.

She was paying $350 a month for a two-car garage with a kitchenette. Then she won $100,000 in the state lottery and bought a house. But her minimum wage job at a doughnut shop will not pay the bills.

Her solution: "I'm going to have to rent the garage in my new house. It's the only way I'm going to be able to pay for it."

Crystal balls turn opaque when experts try to predict the long-term future of garage living in Southern California.

If it is widely obeyed and vigorously enforced, the new federal law that outlaws the hiring of illegal aliens theoretically could reduce immigration. Likely to result in increased immigration, on the other hand, are the stepped-up civil war in Nicaragua and a recent ruling by the U.S. Supreme Court that broadens the grounds for acceptance of foreigners' petitions for asylum.

In Los Angeles, an ordinance passed in December restricts the number of people who can legally live in a rented house or apartment. That law, if it can be enforced by the overworked Conservation Bureau inspectors, might force people onto the streets—or into garages.

The U.S. Department of Housing and Urban Development is seeking to evict illegal aliens from publicly subsidized housing. That has been held up by a court injunction and a congressional moratorium that ends Sept. 30. It, too, could force immigrants into alternative housing.

Even vastly increased enforcement could prove counterproductive, some experts think. They say the accompanying publicity could give homeowners the idea of moving their cars out of their garages and moving tenants in.

Experts tend to agree that in the short term garages will be occupied in great numbers. They see no end to the economic pressure that pushes immigrants northward, or any likelihood that the immigrants will be deterred by housing below the U.S. middle-class norm.

"They come up here and live in poverty, but before they lived in misery," said Gutierrez, the East Los Angeles public health nurse and a former Peace Corps volunteer in Bolivia. "They may have come from a dirt floor, but now they have a concrete floor."

Leobardo Estrada, a demographer at UCLA, said Latinos are moving to the suburbs—where garages are plentiful and cheap apartments are not—in pursuit of jobs in outlying industrial parks.

Unskilled and semi-skilled laborers are finding work in the San Fernando Valley, Orange County, San Bernardino and Riverside, he said. "Jobs have suburbanized. And it's forcing immigrants to relocate."

Lee, the Center for Law and Poverty lawyer, is among housing specialists who say occupied garages should simply be legalized. That would provide inexpensive housing and avoid concentrations of poor people in public housing projects, she said. There would be "sprinkles of low-income people living in small efficiency apartments in garages."

Single-family homeowners are already permitted to convert garages or build second units under so-called second-unit ordinances, which every city in California had to adopt in some form under state legislation passed in 1981.

However, in Los Angeles, as in most cities, the permit process is complicated and expensive, requiring a public hearing and a non-refundable $1,900 application fee.

Frank Eberhard, the city's chief zoning administrator, estimated that there are no more than two applications a month.

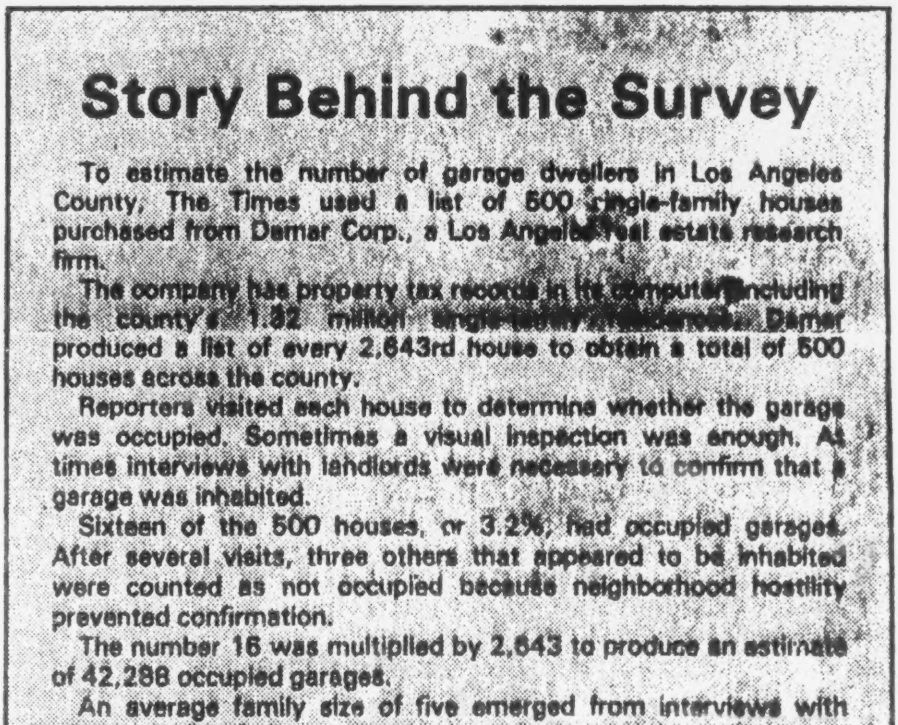
Baer derided the second-unit ordinance as a "sort of a middle-class view" of how to create low-cost housing.

Baer said Southern California's garage people have their counterparts in developing nations around the world.

Immense numbers of peasants have abandoned the countryside hoping to work in their countries' new industries. Unable to find jobs or housing in teeming cities such as Calcutta, Bombay and Cairo, they have formed huge squatter settlements on sidewalks, in parks and in cemeteries.

Southern California, Baer said, is "facing a Third World phenomenon, and we are not equipped to deal with it."

Neither he nor UCLA's Estrada predicts evictions in the numbers that would produce Third World-type squatter settlements here. Baer has studied South Gate's eviction program and doubts that other cities could stand the political heat that would result from "evicting a mother and her children from a garage when there is no place for



Story Behind the Survey

To estimate the number of garage dwellers in Los Angeles County, The Times used a list of 500 single-family houses purchased from Damar Corp., a Los Angeles real estate research firm.

The company has property tax records in its computer, including the county's 1.32 million single-family residences. Damar produced a list of every 2,643rd house to obtain a total of 500 houses across the county.

Reporters visited each house to determine whether the garage was occupied. Sometimes a visual inspection was enough. At times interviews with landlords were necessary to confirm that a garage was inhabited.

Sixteen of the 500 houses, or 3.2%, had occupied garages. After several visits, three others that appeared to be inhabited were counted as not occupied because neighborhood hostility prevented confirmation.

The number 16 was multiplied by 2,643 to produce an estimate of 42,288 occupied garages.

An average family size of five emerged from interviews with officials in South Gate, where a large-scale crackdown on garage dwellers is under way, with building inspectors in Los Angeles and Long Beach, and with people familiar with the neighborhoods.

Multiplying 42,288 garages by five people per garage produced an estimate of 211,440 garage dwellers.

(In researching the article, reporters visited scores of other occupied garages, which of course were not part of this sample.)

Times Poll director I. A. Lewis, who designed the count, and other authorities in statistics said that a sampling of this size can err up to 1.5 percentage points in either direction. That puts the range of occupants at 110,000 to 310,000.

David M. Heer, associate director of the University of Southern California's Population Research Laboratory, said the true number is much more likely to be in the middle than at either extreme.

"The farther you get from the median, the less likely it is to be the correct number, but it's still possible," he said.

Heer, who teaches poll-taking at USC, said the survey employed a "very acceptable, standard method of sampling."

them to go."

Said Estrada: "If we were to force people not to live in garages, they would have to go to cars. If they don't have a car, they would go to the parks, sleep in buildings or on your front lawn. The issue would get bigger and bigger and uglier and uglier."

LAWRENCE K. HO / Los Angeles Times

A group of people who were living in the garage of a home in South Gate last year. They were evicted after neighbors complained.

LAWRENCE K. HO / Los Angeles Times

South Gate housing officer William Campana inspected ceiling of a converted garage last year while the tenants' children slept. The landlord was ordered to evict them, and did so.

Mr. Conner. The immigration problem that we attempted to address with the recent Immigration Reform and Control Act is a serious one. Notwithstanding that, FAIR from its founding, and I believe with the support of the American people, has supported a priority for political refugees, has maintained that political refugees, even if they enter the country illegally, should not be returned to their home country if they have a well-founded fear of persecution on account of race, creed, religion, or membership in a particular group.

DECLARES U.S. A "SANCTUARY"

However, we object to this legislation which declares that the United States is a sanctuary for illegal aliens from Central America. We oppose this legislation which is a blanket amnesty for illegals from El Salvador and Nicaragua for the same reasons that we have objected to the extension of extended voluntary departure to any group; and for the same reason that we objected to the thoughts within the Administration that EVD should be given to nationals from all Communist countries, but not non-Communist countries.

The Refugee Act said we are going to put to the front of the line people who have a well-founded fear of persecution on account of race, creed, or membership in a particular group. And it set up a procedure to make sure we did not make a mistake and send somebody back who was threatened. A district director makes an initial decision. The person can then go to an immigration judge who reviews it, to the Board of Immigration Appeals who reviews it, to the Federal courts who review it. And the best test of whether the system works is not differential percentage rates of approval, but what has happened to the people who have been returned.

Have people been returned to El Salvador who, in fact, had a well-founded fear of persecution on their return? Now, the sanctuary movement originally claimed that 40 percent of all returnees were tortured and killed, a claim widely distributed all throughout the United States, until it was revealed that they fabricated the evidence. And then it shifted.

ASYLUM GRANTED TO SALVADORANS

Now, there are those on the other extreme who say that there is no problem in El Salvador, that there is no one who should ever get political asylum. In fact, INS grants political asylum to hundreds of El Salvadorans each year, as it should when there is evidence.

INDEPENDENCE OF ICM

The only independent organization which does not have a position on the Reagan Central American policy which has gone and looked in Central America to see what happened to the returnees, the Intergovernmental Committee for Migration, found no evidence that people were being returned who were, in fact, being subjected to persecution, torture for the reasons cited in the Refugee Act on their return.

PRESS REPORTS ON EL SALVADOR

What is more significant, there are journalists of every political stripe crawling all over El Salvador, every one of them hoping to win the Pulitzer Prize, all looking for evidence that the United States is returning people who, in fact, had a well-founded fear of persecution. None of those independent organizations or journalists can find the evidence. At some point, one is entitled to say the evidence is that the Refugee Act appears to be working, flawed as it is, backed up as it is by our court system.

Now, in the face of that evidence, the sanctuary movement became the EVD movement, abandoned their position that returnees were being harmed, and shifted to a new and, I think, a more dangerous ground in terms of our Refugee Act. To quote Aryeh Neier's testimony before the House Rules Committee, there is, and I quote, "civil war and massive dislocation in El Salvador." In his testimony today, he again reminds us that there are some areas of El Salvador where there is conflict to the degree that people who reside in those areas have picked up and moved to areas where there is not conflict, where they can feel safe.

EVD EFFECTS IMMIGRATION LAW ENFORCEMENT

Now, on the basis of that, it is said that everybody who can get out of El Salvador ought to have a right to come to the United States. I submit to you that this principle, as first set in El Salvador and Nicaragua, is a prescription that would destroy everything we tried to accomplish with employer sanctions. It would destroy the limits that we have on the basic immigration laws in this country.

The notion that the people who are going to be admitted will be temporary flies in the face of human nature. It flies in the face of all the testimony you heard from the previous two witnesses who ~~repeatedly~~ said that things are not going to change, the problems are not going away. And the reason they are not going away is they are demographically driven, not by the East-West conflict on which both this Administration and some of the prior witnesses have focused.

Not only that, while they are here they will form attachments, have children who are American citizens, and the notion that they are going to willingly return to El Salvador at the end of some period or that the organizations who have criticized the El Salvadoran government will be content and say that all is nirvana there, it seems to me strains credulity.

If the principle is going to be that where there is civil war and dislocation the people are going to have a right to come to the United States, there is going to be a long list of countries getting in line for their citizens to come here, beginning with Lebanon, Sri Lanka, South Africa, the Philippines, to name a few. And that is why we vigorously object and oppose this legislation and hope that the Committee will turn it down.

To conclude with this observation, the best test of the arguments that I have just made, Mr. Chairman, is to ask the supporters of EVD a simple question. That is, would they agree to continue to support this legislation if the number of persons given EVD is to be subtracted from next year's legal immigration quotas, and then to be restored when the temporary period of these individuals expires and the individuals return home?

You see, it is a good test because it will tell you whether, number one, they really believe that it is going to be temporary; number two, whether they really believe their own rhetoric about the danger that occurs to people who are required to return to El Salvador. Because if they really believed that there was a terrible danger, then they would say yes, these people should go to the front of the line, and it is only a temporary six-month or a year wait, so why should anybody in the line be unwilling to wait for a year to protect the safety of someone whose lives are in danger?

Yet when I put this to organizations, have put the piece of paper on the table, said I will sign, if you sign, that you are going to give EVD to these folks. We are going to count them up. They are going to get ID cards. And when they return home, then the numbers will be released to the 270,000 in the numerically restricted categories, the answer is always no. That for me is the test of what they really believe about this legislation.

[The statement of Mr. Conner follows:]

S.332, IMMIGRATION AMNESTY FOR SALVADORANS

-Roger Conner-

Statement before the Subcommittee on
Immigration and Refugee Policy

Committee on the Judiciary

United States Senate

June 18, 1987

Mr. Chairman, Members of the Subcommittee, my name is Roger Conner, and I am the executive director of FAIR, the Federation for American Immigration Reform. Thank you for this opportunity to provide FAIR's views on S.332, extended voluntary departure ("EVD") for Salvadorans.

SUMMARY

The proposal to grant EVD to Salvadorans (and other Central Americans) is bad immigration policy. World and Central American populations are exploding. Our generous refugee policy can only survive politically if it is reserved for refugees, and not expanded for economic migrants. EVD-type policies have failed in Canada and elsewhere. Civil strife is a condition afflicting much of the world, and immigration is not the solution. The sanctuary movement is discredited in public opinion, yet still is heard in Congress. EVD for Salvadorans is not temporary, and bill supporters are apparently unwilling to ensure that it be made temporary. There is lack of evidence to support a new and massive Central American amnesty.

THE LARGER PICTURE

There are immense immigration pressures on the U.S. World population is passing the five billion mark, while the freedom and prosperity of our country stand in stark contrast to the life of hundreds of millions, perhaps billions, in the world. Globally, the establishment of rapid communication and transportation links has led to unprecedented migrations. The bright, the agile, the proximate of the world want to resettle here, and we in our decency are instinctively wish to meet that demand, without thinking through the consequences for our national interest or those of the sending countries. Our sympathy for the individual must be measured against larger consequences.

Heeding two decades of warnings, U.S. population growth has slowed, save for immigration. Yet to our South, in the Caribbean Basin, lies a hot-spot of the world population explosion. Mexico and other Caribbean nations must together create jobs for nearly 1.8 million new entrants each year to their labor forces, plus an additional 500,000 to 600,000 jobs a year if they are to reduce their existing unemployment and underemployment to the levels of most developed countries by the year 2000. By the year 2025, the population of Mexico, Central America and the Caribbean nations is projected to reach 366 million dwarfing the 295 million foreseen for the U.S. Thus, the vigorous growth we see now is little more than the tip of the demographic iceberg. Illegal immigration from Central America was well-established long before the onset of insurgencies in the early 1980s. To say that immigration is merely the result of civil strife is too simplistic; both are consequences of unforgiving demographic trends.

A New York Times poll in late 1986 showed that 40% of the Mexican people would migrate to the U.S. if given the opportunity. In a Spanish International Network exit poll of voters in March, 1985, 67% of Salvadorans responded "yes" to the question "Would you emigrate to the United States?" Large-scale and illegal immigration to the United States is of questionable benefit to this country, and does nothing to solve the problems of the sending countries. The question is whether the United States should respond to problems by the easy emotionalism of more immigrant admissions, or by more fundamental diplomatic and economic initiatives.

The American people, as shown in poll after poll, oppose illegal immigration and oppose increases in legal immigration. This sentiment was legislatively endorsed by the 1986 passage of the Immigration Reform and Control Act. Now that immigration reform is beginning to work, illegal-alien employers and sending countries are intensifying pressure for exception from the new law. If those pressures are resisted, then the democratic consensus shall prevail. If exceptions are now conceded, then the long-term policy of immigration control is destined for collapse.

Already, unscrupulous employers want "temporary" exemptions. And, upon news that an exception for El Salvador is under Congressional consideration, governments and nationalities from Mexico, Nicaragua, Guatemala, the Dominican Republic, Ireland, and Poland have entered the political contest for special treatment, just for a beginning.

Those immense immigration pressures, the natural resistance to large-scale immigration, and the tendency for economic migrants to attempt abuse of the asylum category are the very factors that led to the enactment of the Refugee Act of 1980. That law adopts the United Nations asylum standard of case-by-case decision on claims of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

One must remember the distinction between refugees ---those in need whom we screen abroad and legally admit on an orderly basis (and in numbers greater than the rest of the world)--- and asylum claimants ---those who enter the U.S. illegally and then claim political asylum, often only after apprehension. In the spirit of humanitarianism, we have chosen to abandon our sovereign right to control immigrant entry with respect to those individuals who meet the asylum standard. As the Majority Counsel to this Subcommittee has said, "Asylum standards ought to be tough; we shouldn't grant somebody asylum lightly or waive the immigration laws that affect everybody else who comes here."

In the spirit of realism, to allow extralegal or legislative dilution of the asylum category hurts most those who are most in need, because abuse of the asylum claim by economic migrants erodes public tolerance for legally admitted refugees and immigrants. This can be seen in Western Europe, where asylum abuse has led this year to tough new restrictions in Great Britain, France, West Germany, Switzerland, and even Denmark, with Europe-wide restrictions almost certain to follow. Canada has just abandoned its "blanket nonremoval policy," which was similar to the EVD proposal in the DeConcini-Moakley legislation. According to Canadian officials, the policy was unfair to legal immigrants and refugees, and was increasingly abused by unscrupulous attorneys and immigration racketeers who used the policy as a recruitment device, guaranteeing transportation and resettlement for a fee. Canada is a country of recent immigrants and public tolerance is high; however, abuse of the blanket nonremoval policy provoked a public backlash. First, a German merchant vessel dumped Tamils off the Canadian coast. Then, the airports began to clog on weekends with planeloads of "third-world" asylum claimants transiting from Europe, which outraged public opinion. Finally, busloads of Salvadorans from the U.S. prompted the Canadians to abolish the EVD-type policy.

The U.S. takes more immigrants and refugees for permanent resettlement than the rest of the world combined. We are in the midst of administering the largest alien amnesty program in the world, so as to better concentrate future immigration enforcement. Under that amnesty, perhaps half of the 500,000 to 1,000,000 Salvadorans in the U.S. would be eligible for legalization.

FAIR opposes group grants of asylum status, and we oppose the use of immigration policy as a political tool. FAIR opposes "EVD" for those of Salvadoran nationality or any other nationality. Within the current Administration a proposal was floated to establish an EVD-type grant for any foreign national from a "Communist-bloc" country, which FAIR vigorously opposed as contrary to rational immigration policy (a copy of our letter to Attorney General Meese is enclosed). Our position is justified and consistent.

DECLARING THE U.S. A "SANCTUARY COUNTRY"

The poverty, conflict and repression in El Salvador are tragic, as are wars and civil unrest in Afghanistan, Angola, Cambodia, Chad, Chile, Columbia, Ethiopia, Guatemala, Haiti, Honduras, Indonesia, Iran, Iraq, Lebanon, Mozambique, Namibia, Northern Ireland, Peru, the Phillipines, Poland, South Africa, South Korea, Sri Lanka, Sudan, Surinam, Uganda, Western Sahara, Zaire, and elsewhere.

How do we respond? With humanitarian and refugee assistance, with diplomatic initiatives to advance human rights. In cases where individuals have been singled out for persecution, through the Refugee Act. The reason is plain: if U.S. policy were to become that any person who lives in a country torn by political strife has the right to come to the United States, the numbers would be intolerable, at a time when we are already in the midst of the largest wave of immigrants in our history, measured in absolute numbers.

So, how did we get to considering such a bill, one which would surely trigger a landslide on newcomers to our shores? Simply, the highly-politicized and law-defying "sanctuary" movement since 1981 has made "EVD" for Salvadorans its top "legal" priority. It is no secret that an intense political mobilization, its express aim to embarrass present U.S. foreign policy, has manipulated immigration issues for its own narrow ends. This tiny minority is capable of directing formidable pressure against targeted Congress Members, but fails whenever put to the test of public opinion. A jury of peers found "sanctuary" activists guilty of criminal immigration law violations, state and local governments (including the City Council of Los Angeles and the State of New Mexico) have rescinded sanctuary declarations after overwhelming public oposition, and by initiative and public vote in Seattle a "sanctuary resolution" was repealed. Despite a massive propaganda effort from central church bodies, less than one percent of American congregations have adopted the sanctuary cause.

Make no mistake, this "temporary grant of safe haven" is just another permanent immigration amnesty, the novelty being that it is only for huge numbers of a specific nationality; it would declare the entire United States a "sanctuary" for illegal aliens from El Salvador and Nicaragua. Its backers make no realistic effort at ensuring its temporary nature. Most everyone concedes that there is no foreseeable end to the Salvadoran troubles. Yet, the argument is made that "temporary" "Extended voluntary departure status for Salvadorans is necessary because all Salvadorans are potentially endangered by civil war and massive dislocation" (Americas Watch). We are being asked to accept permanently ten to twenty percent of the Salvadoran population.

This is another massive amnesty, one that can only trigger a further influx into the United States at a time when the job market and the housing supply for American workers, especially the disadvantaged, are already overwhelmed. For example, in Los Angeles, over 200,000 are living in garages, without proper plumbing, electricity or even windows. The "Peoples' Park" is already full of America's homeless. This bill would make a bad situation worse.

Is it true that the special situation of illegal Salvadorans in the U.S. so compels our concern that we must temporarily place their interests ahead of millions of intending legal immigrants? If so, the supporters of this legislation would readily agree to two conditions:

1. That the number of EVD grantees be temporarily subtracted from the worldwide legal immigration quota, and the legal quota restored as EVDs return to their home country.

2. That Congress declare that children of EVDs share their parents' immigration status, rather than automatic citizenship and consequent equities leading to permanent residence here.

To continue quoting the Majority Counsel, "I think we need to have a policy of safe haven.,..The basic criticism will be that until we have some mechanism to keep track of people here---once granted extended voluntary departure in large numbers (particularly to a group like Salvadorans who have had a history of economic migration to the U.S.)---they have no incentive to leave, nor is their departure enforceable....I recognize this criticism as a legitimate concern..." (In Defense of the Alien, Vol. VIII, 1985, p. 206). Salvadoran EVD is not temporary, but practically permanent. The basic criticism is yet far from met.

LACK OF EVIDENCE TO SUPPORT MASSIVE SALVADORAN AMNESTY

Is there justification for a radical departure from present immigration law? Evidence that Salvadorans are deported to certain death is conspicuously absent. Evidence that Salvadoran asylum applications are politically denied is lacking. The best data available, from the ICM, show that Salvadoran migration is economic and that there is no special danger to returnees. Human rights conditions in El Salvador have improved. The Supreme Court has recently decreed more relaxed asylum standards. The U.S. can not accomodate illegal entry of economic migrants.

The sanctuary movement seized public attention with the unlikely allegation that the U.S. government was deporting thousands of Salvadorans to certain death. Years of agitation and investigation have failed to demonstrate that claim. Now, the argument is that the U.S. government fails to grant asylum to Salvadoran claimants for political reasons.

For example, "Americas Watch" maintains that a General Accounting Office (GAO) report on Asylum (GAO/GGD-87-33BR, January 1987) finds that the Immigration and Naturalization Service (INS) "employs a subjective standard in determining asylum eligibility and discriminates against Central American applicants." However, the GAO report itself merely finds that approval rates differ for claimants from different countries, as one might expect: "This analysis revealed differences in approval rates between the four countries in our study but does not necessarily indicate a bias in the application of asylum standards..." (p. 15). Nearly one-third of all asylum applicants are from El Salvador (pp. 15-16). And, "Worldwide, 7,643 (24 percent) of the asylum applications did not fall under any of the five categories within the refugee definition and feared harm based upon conditions of internal civil or military strife. Eighty-seven percent of these applications were from El Salvador....In reviewing asylum claims based upon internal strife, we noted that these applications did not always include documentation..." (p. 21).

A table of asylum approval rates is attached (U.S. Committee for Refugees, December 1986, p. 9). The average asylum application approval rate is 23.3%. There appears to be no correlation between the approval rate and U.S. foreign policy towards the sending country. There does appear to be a correlation between lower approval rates and ease of travel to the U.S. It is logical that a country with a long history of supplying economic migrants to the U.S. would have a lower asylum approval rate than a country on the other side of the world where there is no tradition of economic migration to the U.S.

S. 332 provides extended voluntary departure pending the outcome of a GAO study on conditions in El Salvador. Such a study has already been done, by the Intergovernmental Committee on Migration (ICM). Again, to quote the Majority Counsel of this Subcommittee, in 1985, "I am pleased that this administration has finally taken this element of the public's concern seriously enough to fund an objective, competent team from ICM to report back. That at least will be a step to help clarify the debate." The ICM reports have been presented to this Subcommitee. The vast majority of Salvadorans report that their motive for immigration was economic. Returned Salvadorans fare as well as the general populace. Of 9,530 returnees who kept in contact with ICM, 70, or less than one percent, reported "personal security problems." Of these 70:

5 had been accepted for resettlement in other countries
32 were waiting for resettlement in other countries
13 were rejected for resettlement by other countries
9 reported their problems resolved
4 had left El Salvador by their own means
1 was given normal Canadian immigration forms
2 had died (one committed suicide in 1985, and one was killed in a bar)
4 had not been located

The GAO evaluated the reliability of ICM reports on the Salvadoran reception program. The GAO noted inherent limitations on data collection, and conceded that it would face identical limitations in attempting to render the determinations required under the DeConcini-Moakley measure. In other words, one study has been done, but the results were not to the liking of EVD advocates who insist on another study by GAO, while GAO warns that it would be unable to improve substantially on the ICM investigation.

All parties, excepting the most rigid ideologues, concede improvements in the human rights situation in El Salvador since 1980 and 1981. If there was a time for this legislation, that time has passed.

The Supreme Court has relaxed asylum standards in the case INS v. Cardoza-Fonseca, March 9, 1987. This will likely result in more asylum grants for nationals of all countries. Before passing precipitous legislation, we should give this precedent a chance to work. "Americas Watch" and others charge that the U.S. government administers asylum adjudication in an egregiously political and illegal manner. If that is so, the remedy lies with the courts, who can compel an administrative agency to properly comply with the law. The remedy is not expansive new legislation.

Now, as if to dramatize the economic nature of Salvadoran immigration to the U.S., the Duarte government has made a special plea that its nationals be allowed to stay in the U.S. for economic reasons. (Also, Salvadoran officials reportedly worry that returnees will carry AIDS, Christian Science Monitor, April 23, 1987). Dr. Segundo Montes, a director of the "sanctuary" group, Central American Refugee Center (CARECEN), alleges that one million Salvadorans in the U.S. repatriate $1.3 billion, three times any previous estimate. Dr. Montes is in the midst of a study of El Salvadorans in the U.S., which he concedes is yet incomplete. In recent Congressional testimony, Dr. Montes reported that he has two samples of Salvadorans in the U.S., one developed from the consulates, another from sanctuary groupings. He reports survey results only from the latter sample.

As written, this bill will destroy employer sanctions before it ever becomes effective. The reason is that if Congress authorizes all El Salvadoran illegal aliens now here to remain, the courts are sure to allow them to work. Since there is no apparatus in the bill to give Salvadorans tamper-proof work permits, the courts will inevitably force INS to allow employers to hire any person who states to the Employer that he or she is an El Salvadoran. Once any illegal El Salvadoran can work here, you will be amazed at the number of illegals who will "become" Salvadoran.

ALTERNATIVES

FAIR urges Congress to uphold the Refugee Act of 1980 and the Immigration Reform and Control Act of 1986.

FAIR urges defeat of the DeConcini-Moakley Salvadoran amnesty bill. If there must be a bill, then sponsors will ensure that EVD is truly temporary by subtracting EVD grants from the worldwide immigration quota and by declaring that children share the status of their parents.

FAIR recommends that the issue be removed from the politics of immigration and U.S. foreign policy. Let's work to improve the ICM Salvadoran reception program, to provide humanitarian assistance, to strengthen the safety of first-asylum refugee camps in the region, and to advance long-term solutions to the Central American crisis.

Thank you very much for the opportunity to testify before the Subcommittee.

--END--

FAIR

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FAIR is a non-profit public interest organization working to end illegal immigration and set

April 21, 1986

The Honorable Edwin Meese
Attorney General of the United States
U.S. Department of Justice
Constitution Avenue
Washington, D.C.

Dear Attorney General Meese:

I am writing to express this organization's grave concern about recent press reports suggesting you are preparing to sign an internal guideline memorandum that would create new procedures for evaluating the claims for political asylum of aliens from so-called "totalitarian" regimes (see New York Times, "U.S. Studies Plan to Ease Access To Asylum for Poles and Others," March 30, 1986). We oppose these guidelines.

Our first concern is that you are giving certain aliens special treatment. While we understand that the Administration is under intense pressure from certain interest groups to grant their nationals favorable treatment, we believe it is in this nation's long-term national interest for you to resist this pressure and to try to preserve the commitment made by Congress in 1980 to evaluate each alien's claim individually and without regard to outside political considerations. Each alien's claim is to be adjudged on its own merits, on the basis of articulable, objective evidence giving rise to a clear probability of individualized persecution if that alien is returned. This statutory scheme places the U.S. squarely within the bounds of the international protocol for the treatment of refugees, see INS v. Stevic, 104 S.Ct. 2489 (1984).

Second, we are convinced the proposed guidelines would constitute a return to national origin discrimination in our immigration law enforcement. We believe that a blanket presumption of persecution to all aliens who simply effect a physical entry into the United States — with or without lawful inspection — from one particular country solely because they are from that country is an exceptional preference constituting national origin discrimination. We believe it is contrary to the express language of the Refugee Act of 1980.

Third, we fear the proposed guidelines would encourage lawlessness by undermining the appearance of fairness. The goal of our immigration policy for the past 25 years has been to move away from distinctions based on national origin. This commitment, which is grounded in the important domestic policy considerations of equity and evenhandedness, should not be abandoned in the name of short-term political objectives. Individualized adjudication insures that all intending immigrants around the world will have the same incentives to comply with our lawful admissions system, rather than to enter without inspection in order to make a claim of asylum from within the country.

Fourth, the guidelines under consideration would open the door to more claims for special treatment, and make distinctions between political regimes impossible to maintain. The past seventy-five years of immigration law enforcement have shown that national origin discrimination is impossible to control. Once exceptions are made for one country or a group of countries, other groups quickly claim entitlement to similar benefits, and the repercussions echo on and on. Soon the entire selection criteria has been compromised. In that regard, we note with alarm the recent unilateral move by Perry Rivkind, INS District Director in Miami, to parole all aliens from Nicaragua because, he says, he believes they may fall within your guidelines once you have signed them. Further, on April 16, 1986, John McCaslin quotes a "Justice Department official" hinting the guidelines should be expanded: "The question we have to ask here is, are Eastern European countries the only communist countries we should be concerned about?" (The Washington Times, "Officials to reconsider Nicaraguan's asylum bid," April 16, 1986.) This is only the beginning. Let's not make the mistake again.

Lastly, our concern is with the future. When will we stop playing international politics with our immigration laws? When is a regime "totalitarian"? Is the People's Republic of China totalitarian today? Less so than 15 years ago? Who makes these judgments? Here the guidelines provide no guidance, and the consequences of your move soon will be manifest. If this Administration continues its present course undermining the congressional commands of the Refugee Act of 1980, and suspends completely the deportation of aliens from Poland and Nicaragua, activists agitating for suspension of deportation and extended voluntary departure for Salvadoran illegal aliens will have all the moral and ideological ammunition they need to press legislation that both we and the Reagan Administration oppose. There is no reason to give them this victory.

We suggest that it is neither a statement in support of, nor one in opposition to, a particular regime to return an alien to his country of origin if that alien has immigrated illegally to the

United States. The decision to deport is merely an exercise of this country's sovereign prerogative to require that intending immigrants comply with our immigration laws.

We urge you not to sign these guidelines. They are not in the national interest.

Sincerely,

Roger Conner

Roger Conner
Executive Director

cc: Alan Nelson

ISSUE PAPER

DESPITE A GENEROUS SPIRIT

DENYING ASYLUM IN THE UNITED STATES

PCB

RE

U.S. COMMITTEE FOR REFUGEES

DECEMBER 1986

Asylum statistics reflect this double standard. The rate of approval for asylum cases decided by INS district directors between June 1983 and September 1986 was highest for applicants from countries generally characterized as unfriendly to the United States. The lowest approval rates were generally for applicants from countries with governments considered friendly and anti-communist, regardless of their human rights records. Thus, applicants from Iran had the highest approval rate during that period, 60.4 percent, followed by the Soviet bloc countries, Romania (51.0), Czechoslovakia (45.4), Afghanistan (37.7), Poland (34.0), and Hungary (31.9). Among the countries with the lowest approval rates were El Salvador (2.6), Haiti (1.8), and Guatemala (0.9). While this kind of statistical comparison has its limitations, the consistency of the numbers indicates an inescapable pattern of bias.

The statistics do not fit the dichotomy perfectly; U.S. officials have been quick to point to the low asylum approval rates for Nicaraguans. Indeed, only 14.0 percent of Nicaraguan cases were approved between June 1983 and September 1986. U.S. foreign policy would suggest a high rate of approval for those fleeing the Sandinista government, which the executive branch opposes. But other factors may influence Nicaraguan asylum determinations. Perhaps most important is Nicaragua's location—in nearby Central America, close enough for possible disorderly movement of asylum seekers to be of concern to the administration. This factor is especially powerful when President Reagan has warned of a possible flood of "feet people" if Central American revolutionary movements are successful. But the approval rate for Nicaraguan asylum seekers has increased; in FY 86—October 1985 to September 1986—it was 27.3 percent. For Salvadorans during that period, it was 4.5 percent; for Guatemalans, 2.3 percent; for Haitians, 0.3 percent. And in April 1986, Perry Rivkind, INS district director in Miami, announced that he would no longer send Nicaraguans back to their country because he fears they will be persecuted. Most Nicaraguan asylum claims are filed in Rivkind's Florida district.

A 1982 draft INS internal report noted that "different levels of proof are required of different asylum applicants. In other words, certain nationalities appear to benefit from presumptive status while others do not." The report contrasts the consideration of Salvadorans with that of seven Polish sailors who jumped ship and applied for asylum in Alaska. "For an El Salvadoran national to receive a favorable asylum advisory opinion, he or she must have 'a classic textbook case.'" But while all the Polish sailors' applications were viewed as "extremely weak" by senior INS officials, a State Department official, before seeing the applications, said, "We're going to approve them."

The Justice Department has been considering new rules which would, among other things, formalize this bias, establishing a presumption that people fleeing "totalitarian regimes" have a well-founded fear of persecution and, thus, are

Asylum Cases Filed with INS District Directors, Approved and Denied, by Nationality, June 1983 to September 1986

Country	Approval Rate for Cases Decided	Cases Granted	Cases Denied
TOTAL	23.3%	18,701	61,717
Iran	60.4%	10,728	7,005
Romania	51.0%	424	406
Czechoslovakia	45.4%	99	119
Afghanistan	37.7%	344	567
Poland	34.0%	1,806	3,495
Hungary	31.9%	137	292
Syria	30.2%	114	263
Ethiopia	29.2%	734	1,774
Vietnam	26.0%	50	142
Uganda	25.3%	75	221
China	21.4%	84	307
Philippines	20.9%	77	291
Somalia	15.6%	74	399
Nicaragua	14.0%	2,602	15,856
Iraq	12.1%	91	655
Yugoslavia	11.0%	31	249
Liberia	8.4%	20	218
Pakistan	6.5%	26	370
Cuba[a]	4.9%	99	1,906
El Salvador	2.6%	528	19,207
Honduras	2.5%	6	234
Lebanon	2.4%	34	1,338
Haiti[b]	1.8%	30	1,631
Guatemala	.9%	14	1,461
India	.3%	1	311
Egypt	.2%	2	703
Bangladesh	.0%	0	403

[a] There were 89,606 cases from Cuba pending at the end of FY 86.

[b] There were 2,042 cases from Haiti pending at the end of FY 86.

Source: Immigration and Naturalization Service (INS)/U.S. Department of Justice.

Note: Starting in May 1983, the Immigration and Naturalization Service kept asylum statistics by number of cases. Each case, or application, may include more than one individual. From June to September 1982 and October 1982 to April 1983, INS asylum figures were for actual number of individuals. To avoid inconsistency, this chart includes data only since INS data was based on number of cases. Nationalities shown are those which had 100 or more cases decided in any one of the fiscal year periods included. The total includes all nationalities.

This chart is based on data for asylum cases filed with INS district directors only. Many applications for asylum are filed with immigration judges, particularly in the context of deportation proceedings. The Office of the Chief Immigration Judge is developing a data system, but asylum statistics are not now available.

Senator DECONCINI. Thank you, Mr. Conner. Yes, sir?

Senator SIMPSON. You are questioning?

Senator DECONCINI. Yes. I did not know if you were in any rush here.

Senator SIMPSON. No, I am fine. You go ahead.

Senator DECONCINI. Let me ask a couple of quick questions of Mr. Neier and Mr. Posner. When were you both last in El Salvador?

Mr. NEIER. I was last in El Salvador in 1986. I have not been there in 1987. I have been about ten times in the last six years.

Senator DECONCINI. Do you have people there now?

Mr. NEIER. Yes.

Senator DECONCINI. You do. How many do you have there?

Mr. NEIER. Three people who work for us in El Salvador.

Senator DECONCINI. On a constant basis?

Mr. NEIER. Yes.

Senator DECONCINI. And you hear from them how often?

Mr. NEIER. Usually daily.

Senator DECONCINI. Daily. And Mr. Posner?

Mr. POSNER. I was also there in mid-1986, and I have also been there about eight times. We also share the services of one person who is there on a full-time basis, and we are in touch almost every week.

DANGER TO RETURNEES

Senator DECONCINI. Is it your belief that it is dangerous for the displaced Salvadorans within the United States to return to El Salvador?

Mr. NEIER. I have to give a definition of "dangerous." Am I in a position to say that a person who steps off the plane is going to be killed instantly? The answer is no. On the other hand, if a person comes from a conflict zone of El Salvador, that person would certainly take their life into their hands if they tried to return to their homes because, generally speaking, they have been forced out of their homes either violently or by some forcible dislocation, and these people have no other place they can go to in El Salvador. El Salvador lacks vacant land that peasants can go to. It has some terrible displaced persons camps. For those persons, there are virtually no alternatives but to try to go to their original places. Yet if they went to their original places or their original homes, I believe that it would be extremely dangerous.

It is not as if there is a death squad lying in wait for them at the airport, but I think it is dangerous for them to try and go to their homes and to try to re-establish themselves in any fashion if they were fleeing areas of conflict within El Salvador, and areas of conflict are pretty extensive in El Salvador.

Senator DECONCINI. Mr. Posner.

Mr. POSNER. I would add a word to that. I would say that it is going to be dangerous for some, and there is a certain arbitrariness about the way in which violence is carried out which would make it virtually impossible from here to predict which are the ones who would be in trouble and which would not. The Government of El Salvador is not in a position today through the courts, through its own civilian governmental structure, to protect people once they do get in trouble, and I think that is really the fear.

You could send somebody back; they could be fine for four or five months when ICM talks to them. Then two months later they would be picked up for no apparent reason, and at that point there is literally no protection for them.

Senator DeConcini. Mr. Conner, have you been to El Salvador?

Mr. Conner. No, I have not, Mr. Chairman.

Senator DeConcini. Do you have any people of FAIR that are down there or travel down there?

Mr. Conner. No, we do not.

Senator DeConcini. And how many members do you have in your organization?

Mr. Conner. Fifty thousand members across the United States.

Senator DeConcini. How many are in Arizona?

Mr. Conner. I do not know the exact number. I can get it for you.

FAIR'S ACTIVITIES IN ARIZONA

Senator DeConcini. Would you please? On May 8, 1987, you wrote to FAIR members in Arizona concerning this bill, and also my amendment to the supplemental appropriation bill to extend the public education period under the employer sanction provision for four months. In that letter you say that, "Delaying the sanctions is not enough for DeConcini. He is working on another front for the cheap-labor employers who refuse to hire Americans and for the highly-politicized 'sanctuary' movement . . . that would give a new kind of amnesty ('extended voluntary departure') to more than a half million Salvadorans illegally in the U.S., and which would draw endless thousands more."

You go on to say that DeConcini "should be working for Arizonans and for poor and disadvantaged Americans, not for illegal aliens and their bosses."

Now, the Chairman of your organization, former Governor Richard Lamm, I know quite well, and I want to know, Mr. Conner, did he approve this letter to go?

Mr. Conner. No, sir.

Senator DeConcini. He did not. Is that normally the operation of FAIR that you operate without the Chairman's approval of what kind of letters you send out, as damaging and misleading as they may be?

Mr. Conner. My Board of Directors has delegated to me as the Executive Director the operation of the organization on a day-by-day basis under the principles they set forth.

Senator DeConcini. Who did you have in mind in that letter, Mr. Conner, when you said that I was working for the bosses of illegal aliens? Can you name some bosses of illegal aliens?

Mr. Conner. Mr. Chairman, what we were trying to express in that letter, and what you have quoted is a bit of hyperbole, I will concede.

Senator DeConcini. Hyperbole. Mr. Chairman, as Chairman, I am going to insert at this time the letter that is the most outrageous letter I have ever had written. It reminds me of some of the ones my good friend from Wyoming mentions that have been written in the area of veterans affairs. It is most outrageous, and I will put it in the record here.

[The information of Senator DeConcini follows:]

May 8, 1987

Dear Arizona Member:

Senator Dennis DeConcini from Arizona is on his way to becoming the number one enemy of immigration reform in the U.S. Congress.

To get the employer sanctions in the new immigration law, the American people had to swallow an unpopular alien amnesty. But now, the illegal-alien advocates want to break the bargain. Large employers of illegal aliens have openly stated that their strategy is to repeal the prohibition against hiring illegal aliens, and the first step is to gain delay of immigration enforcement.

They found Sen. DeConcini to do their work in Congress. DeConcini tacked an amendment to the Supplemental Appropriations bill to delay employer sanctions enforcement for four months, to give sanctions opponents time to organize a national campaign for repeal. U.S. Senator John McCain of Arizona supports DeConcini's action.

Delaying the sanctions isn't enough for DeConcini. He is working on another front for the cheap-labor employers who refuse to hire Americans and for the highly-politicized "sanctuary" movement. DeConcini is the primary sponsor of a bill that would give a new kind of amnesty ("extended voluntary departure") to more than a half million Salvadorans illegally in the U.S, and which would draw endless thousands more. And, because of the Senator's reckless legislation, the governments of Mexico, Guatemala, Ireland and others are now clamoring for similar special exemptions from the immigration law.

Please report your views to the Senator today. Call his office at (202) 224-4521. Or, send a personalized letter (Sen. Dennis DeConcini, United States Senate, Washington D.C. 20510). Let DeConcini know that he should be working for Arizonans and for poor and disadvantaged Americans, not for the illegal aliens and their bosses.

Sincerely,

Roger Conner
Executive Director

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Mr. CONNER. What we were trying to express, Mr. Chairman, is that we believe that the employers of illegal aliens have profited from being able to hire illegal aliens. The presence of the illegals has kept wages low. American workers have paid the price in the continuation of illegal immigration, and they will continue to pay the price.

Senator DECONCINI. Would you name some of those bosses for us, Mr. Conner?

Mr. CONNER. I would be happy to, Mr. Chairman. I cannot call to name a specific employer who hires illegal aliens in Arizona.

Senator DECONCINI. You do not know any, do you?

Mr. CONNER. I do not personally know any employers. I know there are plenty of them who do hire illegal aliens.

Senator DECONCINI. How could you put that in a letter if you cannot name any bosses of illegal aliens that I am working for? You do not have any proof of that, that I am working for the bosses of illegal aliens. You cannot even name a "boss of illegal aliens," can you, in Arizona?

Mr. CONNER. I cannot name an individual in Arizona who hires an illegal alien, Mr. Chairman.

Senator DECONCINI. Then why would you put that with the name of former Governor Lamm, Chairman of your organization, why would you say that I was working for the bosses of illegal aliens when you cannot name any and you do not know of any and you do not know that I am working for them—you have just said that—why would you put that in your letter?

Mr. CONNER. Because we were trying to express, Mr. Chairman, that the two pieces of legislation we recognize, we believe, are clearly part of a larger strategy—not of yourself, Mr. Chairman, because you have expressed yourself publicly on it—part of a strategy, though, to destroy this legislation that has just been passed by attacking employer sanctions, first by delaying it and then by having it thrown out altogether, and having amnesty——

Senator DECONCINI. Well, in the course of opposing my extension—and I respect your views just as I do my good friend here who opposes them—but he would not and I would not resort to such a charge that I am involved with representing the bosses of illegal aliens. Is that not irresponsible for you to make such a charge when you have just said that you cannot substantiate it at all?

Mr. CONNER. Mr. Chairman, as I indicated to a member of your staff when he and I met in the friendlier confines of a softball field on Sunday, if you, Mr. Chairman, and the staff feel that the letter in an effort to excite our own members into an awareness of the importance of this legislation—which we feel very deeply about—has made a statement which you consider misleading, I will be happy to write a letter to every person who received the first one and correct the misimpression.

Senator DECONCINI. Well, I would——

Mr. CONNER. What we were trying to convey, Mr. Chairman, in an honest and serious way, was how strongly and deeply we feel that the progress of the legislation that we fought so hard for for the last 8 years is in peril. It is in peril, and it happens to be in peril by these two pieces of legislation. And we respect your views on these and respectfully disagree, but we feel very——

Senator DECONCINI. Well, Mr. Conner, I would respect yours, too, but I cannot respect yours. Now I am very sad to hear that my friend and person that I know—not intimately by any means—former Governor Lamm, his name appears on this, and I cannot believe that he would sanction this. You indicate that he did not. I have not talked to him, nor would I go and bawl him out for it because he did not even know it.

Yes, I will ask you to do that because you have done me unfair damage. I can accept anybody disagreeing with me and urging people and my constituents not to support some legislation that I propose. But to call DeConcini "working for the bosses of illegal aliens," now that you have honestly said that you cannot substantiate that, to me is just really outrageous and very disappointing. Because I think your organization has a valid approach; I happen to disagree with it here, but I think you are interested in getting some stabilization in immigration policy. But what you have done here is just outrageous. Mr. Conner, I just want to know, did your organization support the Refugee Act of 1979?

Mr. CONNER. We did support the passage of the Refugee Act of 1980, yes, sir.

Senator DECONCINI. In 1979? Was it the 1979 Refugee Act?

Mr. CONNER. Yes.

Senator DECONCINI. You did support that.

Mr. CONNER. Yes.

Senator DECONCINI. I am advised that you did not support it, and that——

Mr. CONNER. We supported amendments to that legislation which were not adopted. We did not oppose the Refugee Act of 1980.

Senator DECONCINI. Okay. I will let the record stand corrected.

Mr. CONNER. Further, if I can add a footnote to that, I can send the Chairman the very first publication that was ever put out by my organization in which the Chairman, John Tanton, wrote that one of the principles of FAIR was that refugees should have first priority within the limited numbers of immigrants which we can accept to the United States. That has been part of our policy since the organization was started in 1979.

[The aforementioned material follows:]

Rethinking Immigration Policy

John Tanton

Immigration Paper I

January 1980

immigration policy should benefit all sectors of our society, not just a limited few. It should strengthen, not weaken, our economy. Worldwide, our approach to international migration should slow, rather than stimulate, population growth in developed nations, and should contribute to the long-term economic improvement of less-developed countries. Current migration policy blocks these goals and stimulates over-all world population growth as well.

Immigration doubtless remains good for the vast majority of the immigrants themselves. They find new economic opportunities and, in the special case of refugees, new freedoms. Among all immigrants, refugees are most in need of a new start in life. Admission of victims of persecution is the one truly humanitarian aspect of U.S. immigration policy. The practice should be continued on its present scale, and could even be increased, both in absolute numbers and as a proportion of all immigration, while overall immigration is pared by dropping categories of less dire necessity. Admission of bonafide refugees who are the special responsibility of the United States should become the new cornerstone of American immigration policy.

In the main, however, international migration now runs counter to the long-range interests of countries of origin, recipient countries, and the world at large. What first appears as a new conflict between individual freedoms and the interests of society is in reality a conflict between the interests of individuals who migrate and those who do not. Precedence must now go to the larger and longer-range interests of the mass of people who will never be able to emigrate, rather than to a select few who can. More weight must be given to the plight of the unseen countrymen whom emigrants leave behind to live with conditions they might have helped to change. Future historians may well record that such a broadened examination of the effects of international migration was a major factor which led to the close of the era of large-scale movements of people between countries.

The question is not whether immigration should be restricted. It has been restricted for decades by virtually all countries, and by us. Nor need we consider ending immigration altogether. We must ask instead: what restrictions are appropriate in today's world, and can the present arbitrary limits be replaced by rational guidelines sensitive to population, resource, environmental, and other factors heretofore seldom considered in setting immigration policy?

One day, the world might return to a system of free and unfettered international migration. That day might come when the people of all nations have learned to live in equilibrium with their resources and environment, and have, as a result, a reasonable chance for self-fulfillment and social equity in their places of origin. Under such conditions there would be little incentive to move, and controls on migration could be relaxed. Satisfaction with conditions at home, coupled with the strong attachment people feel for families, friends, and familiar things, would provide all the restraints necessary. Freedom to migrate at will is incompatible with the realities of today's world, but that freedom may be achieved one day, when mankind learns to live in harmony with its environment.

Senator DECONCINI. Mr. Conner, where do you get the figure that we right now have the largest number ever of immigrants into the United States?

Mr. CONNER. It is a simple matter of arithmetic, Mr. Chairman, between the numbers of legal immigrants that are being admitted to the United States and the numbers of illegal immigrants which the most conservative estimates, which come from the Census Bureau says are being added to the United States. Add them up, look at the last five years or the last ten years, whichever number you would pick, and try to find a five- or ten-year period in American history when the numbers are higher, and you cannot find one. That is why I say we are in the largest number in absolute numbers in our history.

Senator DECONCINI. You are including in immigrants illegal aliens.

Mr. CONNER. Yes, sir.

Senator DECONCINI. Okay, because I think it is important for the figures to point out that immigration, legal immigration to this country in 1980 reached its peak of approximately 800,000. Today, the legal immigration is approximately about 500,000. So it is not at the peak.

I do not know how to determine how many illegal——

Mr. CONNER. Just so the record is accurate, Mr. Chairman, the last year for which we have information, I believe the number of immigrants and refugees admitted for permanent residence is 601,708 for fiscal 1986.

Senator DECONCINI. Now, Mr. Conner, this will be the last question, and I will let my good friend from Wyoming proceed.

Going back to your letter of May 8th, you say in there that S. 332 would grant an "amnesty * * * to more than a half million Salvadorans." In your testimony today, you say that up to 50 percent of the Salvadorans in the United States would qualify for legalization in IRCA.

Are you saying that there are over a million Salvadorans in the United States? Or are you just once again distorting the facts for your own purpose?

Mr. CONNER. Mr. Jose Napoleon Duarte in his public pronouncements indicated that there were a million illegal aliens present in the United States from El Salvador. The indications that we have heard are that in terms of El Salvadorans who would qualify under the Immigration Reform and Control Act for the amnesty are on the order of a quarter of a million. So you put the figures together, as we understand them, half a million illegal aliens from El Salvador given amnesty by this legislation is based on the figures that are out there, a reasonable estimate of what could come down the pike.

Senator DECONCINI. Now, Mr. Conner, "amnesty," what does that mean to you? Does amnesty mean that they can proceed in a legal way to be immigrated into this country if they meet the requirements of amnesty; and then if that occurs, they do not have to go back? Is that a fair interpretation of what you think?

Mr. CONNER. Our view of amnesty, Mr. Chairman, as a definition is that if you were illegally present in the country before, that you had violated the laws to come in, and if you were going to comply with the law you would go back home, and that you are not legally entitled to work here.

Senator DECONCINI. Right.

Mr. CONNER. To be given amnesty means that you can live here, that you can work here. That is what amnesty means, and that is what this bill does.

Under the Immigration Reform and Control Act, for example, the persons are only given temporary residence of a period of a year-and-a-half under the Immigration Reform and Control Act, and everyone understood that to be amnesty.

Senator DECONCINI. But with this bill, EVD does not give a complete amnesty. Would you not consider it in your terms a temporary amnesty?

Mr. CONNER. We can label it a temporary amnesty even though I think the people are going to be permanent.

Senator DECONCINI. That is a distinction in your mind?

Mr. CONNER. I think really, Mr. Chairman, it is a distinction without a difference, because any more than the amnesty given under the Immigration Reform and Control Act is a temporary amnesty. Even though legally it is temporary resident alien status, everybody understands that none of the people are going home who get the amnesty under the Immigration Reform and Control Act. And none of the——

Senator DECONCINI. Well, once they qualify, sure, that is the purpose of the amnesty, right? Under the EVD, under the DeConcini-Moakley bill, it does not give that absolute amnesty.

Let me just ask this question. In your statement, I note that your group opposes all EVDs.

Mr. CONNER. That is correct.

Senator DECONCINI. And so I take it it is FAIR's position that the starving people of Ethiopia who have been persecuted by the Communist Mangusta regime there that have been granted EVD status here should be returned and should never have been granted——

Mr. CONNER. What they should have——

Senator DECONCINI. Excuse me—or the people in Afghanistan who have been routed out by the Soviet invasion of that country and have been granted EVD status here, or the people in Poland who have been persecuted and have been granted EVD that they should never have been granted that and that we should return them all? Is that FAIR's position?

Mr. CONNER. No, it is not. It is our position that the Refugee Act of 1980 is very amply suited to each of the circumstances you just described: to the Poles who fought for Solidarity and faced persecution as a result, they should have applied for political asylum; to the Afghanis who have been driven out of their homes and threatened by the Communist government, they should have been going through the asylum process.

We have got a Refugee Act. It was passed. One of the reasons and arguments I can remember distinctly standing with the counsel of this Committee, arguing before an assembled staff of a hundred people over the Refugee Act, and one of the arguments he gave for passage of the Refugee Act was this constant ad hoc—this country, that country, this country—grants of these general administrative positions.

So what I understood with the passage of the Refugee Act was we were going to end this ad hoc giving of one country at a time, and go to case-by-case evaluations where we would remove the individual circumstances from these highly politically charged discussions over whether EVD is to be granted. That is the reason that we have——

Senator DECONCINI. And that is a fair answer from your position. But those countries that EVD has been granted to—and Poland, I understand, they just revoked it yesterday, and Uganda they took away, but there is still Ethiopia and Afghanistan. You are saying that if you cannot get the Refugee Act to permit them in that we should not consider the present position that the Administration has taken in granting EVD status because you folks disagree with that.

Mr. CONNER. We believe——

Senator DECONCINI. If you cannot have it your way, do not do anything for them; is that what you are saying?

Mr. CONNER. No, what we believe, Mr. Chairman, is that the United States cannot have unlimited immigration. We all agree there have to be limits.

Senator DECONCINI. I agree with that.

Mr. CONNER. And priorities. Therefore, the question is, who are we going to allow to jump the line of the millions who want to come here? Who is going to be allowed to jump line over everybody? Our conclusion is that persons who have a well-founded fear of persecution on account of their race, religion, or membership in a particular group should be allowed to jump line over everybody else waiting and wanting to come here, and that others should be required to get in the queue with everyone else.

Senator DECONCINI. Thank you, Mr. Conner. I have many more questions, but I will not indulge on my friend's time and patience any longer.

I would ask that in the record appear, unless Senator Simpson has already done so, the letter from Mr. Duarte. I do want to note that it does not cite a million; it cites 400,000 to 600,000 Salvadorans into the United States, and also a copy of the letter from the Archbishop of San Salvador.

[The information of Senator DeConcini follows:]

PRESIDENTE
DE LA
REPUBLICA DE EL SALVADOR

San Salvador, April 10th, 1987

Dear Mr. President:

I am writing to you to appeal for assitance with respect to the situation of Salvadoran illegals residing in the United States. The passage by the United States Congress of a new immigration law imposing sanctions on employers who hire illegals and thereby pressuring their return to their countries of origin has created a very serious problems for El Salvador.

The problem has several dimensions. The earthquake of October 10, 1986, which left up to 300.000 personas homeless, in addition to the thousands of persons already displaced and homeless from the seven years of war raging in my country, has created a severe economic crisis. Unemployment and under-employment are high. Our figures show that some 400.000 to 600.000 Salvadorans have entered the United States illegaly since January 1982. The masive return of Salvadorans from the United States would add to the already disastrous levels of unemployment and economic crisis.

The return of Salvadoran immigrants from the United States also would reduce drastically the amount of money received by poor Salvadoran people in remittances from relatives now working in the United States. My Government estimates that the total value of remittances is some place between 350 to 600 million dollars annually, and is thus larger than the United States Government's assistance to El Salvador, as we struggle to consolidate our constitutional democratic system.

The enormous cost of the war, the destruction the guerrillas have caused, the reduction of our sugar export, the loss of the cotton market and the plummeting of the coffee prices all bode ill for the Salvadoran economy in the coming year. To eliminate remittances from the United States would be yet another blow that seems counterproductive to our joint aims of denying Central America to marxist-leninist regimes, detrimental to the consolidation of democracies, and make more difficult the creation of viable growing economies that can improve the lives of Salvadorans.

I believe that El Salvador has during the past seven years made tremendous progress in combatting communist insurgency, consolidating democracy and improving the human rights situation. I fully recognize that the improved human rights situation does not justify the granting of political asylum by the United States to Salvadoran illegals, and I am gratified by the fact.

I nevertheless, believe that the seven years of war, the calamitous earthquake and our Governments' common goals and objectives would justify a program of extended voluntary departure for Salvadoran illegals already in the United States at this date until the economic situation has improved sufficiently. At that time a gradual and orderly return of Salvadorans could begin for their re-incorporation into the Salvadoran society without affecting too adversely the objectives for which your and my Governments are fighting.

Based on the above, I respectfully request that you consider seeking, either by law or executive regulation, a program in which Salvadoran illegals could be granted extended voluntary departure until the economic situation has improved.

PRESIDENTE
DE LA
REPÚBLICA DE EL SALVADOR

I am grateful for your understanding and look forward to the priviledge of your reply.

Your respectfully,

José Napoleón Duarte
President of El Salvador.

MR. RONALD REAGAN
PRESIDENT OF THE UNITED STATES
WASHINGTON, D.C.

San Salvador, April 19, 1987

The Honorable
Joe Moakley
House of Representatives
Washington, D.C. 20515

Dear Congressman Moakley:

I take the opportunity of my trip to New York on the occasion of the Easter Holidays, to extend to you my best wishes for your total well being and to send you this petition.

I have received disturbing news from my illegal countrymen of the imminent enforcement of the Simpson-Rodino act, the true legal instrument that regulates the vast area of immigration to the United States.

We know of your struggle in favor of extended voluntary departure that would greatly benefit Salvadorans, for which we are immensely grateful.

We believe that this extension is necessary today more than ever because of the prolongation of the conflict that continues generating -- even though to a lesser degree -- the phenomenon of voluntary or forced emigration; because of the aggravating situation of the earthquake that left more than thirty thousand families homeless and damaged many others; because of the lack of job opportunities that makes unemployment a disturbing and increasing reality; because of the spectacular drop in prices of export products, especially coffee, that constitutes the major source of income for the country.

While on the area of democratization -- despite the above mentioned adverse factors -- significant steps have been taken, in so far as ~~there has been a perceivable reduction of human rights abuses, we believe the the massive return of illegal Salvadorans would not only disrupt what has been achieved with great effort,~~ but revert to a worse situation.

Therefore, I have allowed myself to send this fervent petition, counting on the sensitivity and sympathy with which you have seen the suffering of the Salvadoran people throughout this conflict.

I graciously address you, Mr. Congressman, reiterating my best wishes and Easter greetings,

With my blessing,

Arturo Rivera Damas
Archbishop of Metropolitan San
Salvador

San Salvador, 19 de abril de 1987

Estimado Congresista Moakley:

Con un atento saludo y los mejores votos de bienestar integral, en ocasión de las Fiestas Pascuales, aprovecho mi viaje a New York, para hacerle llegar esta petición.

Me han llegado noticias de la preocupación de mis compatriotas ilegales, por la inminente aplicación de la ley Simpson-Rodino, verdadero instituto jurídico que regula el vasto campo de la inmigración a los Estados Unidos de América.

Sabemos de sus luchas en favor de la extensión voluntaria, que beneficiaría grandemente a los salvadoreños, por lo cual le estamos altamente agradecidos.

Creemos que esa extensión, hoy más que nunca es necesaria: por la prolongación del conflicto, que sigue generando- aunque en menor grado- el fenómeno de la emigración voluntaria o forzosa; por la situación agravante del terremoto que dejó sin vivienda a más de treinta mil familias y averió las de otras tantas; por la falta de fuentes de trabajo que hace de la desocupación un hecho preocupante y creciente; por la caida espectacular de los precios de los productos de exportación, especialmente del café, que constituye el rubro de ingresos de mayor significación para el país.

Si bien en el aspecto de la democratización -no obstante los hechos adversos, arriba señalados- se han dado pasos de significación, en cuanto que han disminuido perceptiblemente los abu

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sos a los derechos humanos, creemos que la vuelta masiva de los ilegales salvadoreños, vendría no sólo a entorpecer cuanto se ha logrado a costa de grandes esfuerzos, sino a retroceder a situaciones peores.

Contando, pues, con la sensibilidad y simpatía, con que usted ha visto los padecimientos del pueblo salvadoreño a lo largo de este conflicto, es por lo que me he permitido enviarle esta ferviente petición.

Reiterándole mis saludos y augurios pascuales, me es grato suscribirme del Señor Congresista,

con mi bendición,

Arturo Rivera Damas
Arzobispo Metropolitano
de San Salvador, El Salvador

Al Honorable Señor
Joe Moakley
House of Representatives
Washington, D.C. 20515
U: S. A.

Senator DECONCINI. I yield to my friend from Wyoming.

Senator SIMPSON. Dennis, I hate to give you this opportunity, but you are the majority. I have a very important phone call I must make, and I do have just some very important questions. May I do that now and you may proceed with some of those vast array of questions?

Senator DECONCINI. Well, Mr. Chairman, I am afraid if I continue to question—you go ahead and I will hold the hearings open for you. If I proceed with any more questions, I am going to lose the very calm reserve that I have.

Senator SIMPSON. I have never seen that—oh, yes, occasionally I have.

Senator DECONCINI. I will be glad to hold it open.

Senator SIMPSON. What is your schedule? Can you be here until about 12:15?

Senator DECONCINI. I am finished, but I am going to stay until you are finished.

Senator SIMPSON. Just give me 10 or 12 minutes.

Senator DECONCINI. Do you want to take a recess for ten minutes?

Senator SIMPSON. No, I do not think—well, I have this group waiting for me to return a call, colleagues all. Maybe take a 5-minute recess. Can we do that?

Senator DECONCINI. That would be fine.

Senator SIMPSON. Thank you, Mr. Chairman.

Senator DECONCINI. The committee will stand in recess for 5 minutes, and we ask the witnesses if they would stay here available for us. Thank you.

[Recess.]

Senator DECONCINI. The Subcommittee will reconvene. We thank the gentlemen for waiting for us.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you. I certainly understand your pain with regard to letters. You and I have been on opposite sides of this bill from the beginning. You should see the collected letters that I have that have rained down on my old bald dome. It seems they always send them to your home town paper, the biggest home town paper, and they always print them—which was the hell of the thing about it.

Anyway, there is enough of that on both sides, and I see more and more of it. I would share with you it is a very interesting thing, whether it is veterans or health care or Social Security or gun control—anything hot, the letters get tougher and heavier. I do not know. I think it is something we all ought to be aware of.

I never did find one group called STOP. They had a big sign, but they did not have any address. I never figured where the hell they were. I hope they are still wherever they are. But enough of that.

Mr. Chairman, you entered into the record one letter which President Duarte send to our government, and I would ask that both of those letters—I think you entered into the record the second letter. Let me enter into the record the first letter.

PRESS REPORTS AS QUESTIONABLE EVIDENCE

Let me ask Mr. Neier, your publication in April, which was the critique, the review of the State Department's country reports on human rights practices for 1986, contained 13 pages on conditions in El Salvador. Eleven of those 13 pages related to stories from the New York Times, the Los Angeles Times, the Christian Science Monitor, the Miami Herald, the Washington Post, and the New Republic. You also apparently used newspaper stories of human rights violations in your testimony.

Most of those stories merely relate experiences that others claim to have had. That is what it is, and I do not perceive that myself—maybe I practiced law too long—as "solid information" of any actual human rights violations. I would like you to please provide us with any independent corroboration that you have of all of the incidents that are described in these newspaper stories.

Mr. NEIER. Senator, we will be publishing another full report on El Salvador within the next month, I guess. It will be a large report, and it will deal with a number of those episodes. And I do not have the document in front of me, you do; but I think you will find it fairly readily. The point we were making in the particular critique of the State Department's report was that the State Department was not only out of touch or presenting different information than what we present, but it was also presenting quite different information than the information that is published by newspapers and magazines of generally high reputation in their reporting.

When we publish our own reports on El Salvador, not merely a critique of the State Department's report, the bulk of the information that we present is information that we have gathered ourselves, not information gathered by newspapers.

Senator SIMPSON. Yes, well, I think that your credibility would certainly be increased when you use the phrase "solid information" that you use something other than just newspaper articles. I hope that next report——

Mr. NEIER. Senator, we happen to know the reporters who gather that information. Sometimes our person goes to the same place and interviews the same people. We have a good basis for evaluating the information that is gathered by those particular reporters. I believe that we quoted James LeMoyne of the New York Times, Marjorie Miller of the Los Angeles Times. I believe we quoted Julia Preston of the Washington Post. We are extremely familiar with their reporting and the quality of their information.

Senator SIMPSON. I thank you. I understand that, and I am not even challenging. Those are fine people. I am just saying if you are in this game as an independent watch organization from the United States, you had better be doing some good independent, thoughtful stuff. That is what I am saying.

Mr. NEIER. And I would say that you should look at our reports which deal with El Salvador per se, and not merely look at a summary report which deals with about 39 countries and that simply is a critique of the State Department's report, and in which we used a technique for showing that the State Department is not reporting what is reported by the press covering that area.

Senator SIMPSON. Let me go on, if I may. The GAO in its report, "Extent of the Problems Experienced by Returned Salvadorans Not Determinable," stated that there are weaknesses inherent in the data collection methodologies of human rights monitoring organizations. Then it went on to describe the weaknesses. You heard that report. You were here.

Mr. NEIER. Yes, yes.

Senator SIMPSON. I think they are very real.

Mr. NEIER. We agree.

Senator SIMPSON. I appreciate that, that you do agree, and I think that is helpful to us.

Has Americas Watch used information of "human rights abuses" from people who may not have accurate information? For example, have you reported violations based on third- or fourth party allegations which certainly would be considered as hearsay in any U.S. court?

Mr. NEIER. I cannot recall any occasion on which we have used third- or fourth-hand information. When we describe the information that we present, we always indicate what the source of the information is; that is, whether we obtained the testimony ourselves or whether it was obtained by the church human rights office, or if we cite a newspaper report, we cite the particular reporter who got the testimony.

We have published, I guess, about 12 reports on El Salvador in the last six years, and they are rather voluminous. They all indicate exactly where we gathered the information.

Senator SIMPSON. The GAO is critical of reports that rely on "voluntary reporting" rather than surveys, questionnaires, or rather formal means for obtaining information. Obviously, voluntary sources may have a particular bias and may give exaggerated reports.

Do you rely on voluntary reporting when you compile your human rights violation figures?

Mr. NEIER. Senator, I would like to preface my response to that. Actually, what you are doing is you are highlighting the lack of human rights in El Salvador, because obviously, if human rights, were generally respected, there would be a system of law enforcement and a system of justice. It would be possible to establish whether particular kinds of abuses take place.

The reason that one has to engage in the kind of human rights reporting that we engage in is that no system of law enforcement of that sort and no system of justice of that sort is functioning in El Salvador.

As far as voluntary information is concerned, yes, people come forward to churches and are directed to the church human rights office and report information. The church human rights office is sometimes able to go to the scene to try to verify the information from other witnesses. Sometimes it is not able to go to the scene because of the conflict that is taking place. We are sometimes able to go to the scene and sometimes not able to go to the scene.

A lot of the time, however, the information that we get is not voluntary. Let me tell you one standard method that we use in gathering information. We go to a displaced persons camp or we go to a refugee camp, and we say, "Who is the most recent person to have arrived here?" We are led to such a person, and we ask that person, "Why did you come?" And if the person tells us about matters involving human rights abuses, we then say, "Is there anybody else who came here who is witness to the same events?" If that is the case, we interview that person separately, and we ask a lot of detailed information of both persons, or of several persons. We try to find out if there are any contradictions in what is said.

If we can get to the place which the person fled, then we go there and we try to establish the reliability of the testimony that we have obtained. In that fashion, we attempt to establish the veracity of the information that we collect. It is not a perfect system. We would like to have the compulsory powers that are available to a system of justice in compelling testimony and in subjecting testimony to a variety of physical tests. Those things are not available in El Salvador, so we are left to do it the way I described. We think it is the best way it can be done.

Senator SIMPSON. I understand. What I have noted in my travels is that the guerrilla insurgents need propaganda victories, and they often use voluntary reports to achieve those. I think one would want to be very careful in obtaining that. I can see that your answers—my time is limited, and if you could respond in a more succinct fashion, I will try to make my questions even more succinct.

Mr. NEIER. Well, as long as you are talking about guerrillas, we monitor abuses by the guerrillas as well. For example, the most recent report that we published on El Salvador was on the use of land mines in El Salvador and Nicaragua. We point out in that report—it is about a 120-page report with a great deal of detailed testimony—that the bulk of the abuses are by the guerrillas in both countries, the FMLN in El Salvador and the contras in Nicaragua.

Senator DECONCINI. Senator Simpson, I am authorized by the real chairman of this committee, and you being the ranking member have really far more seniority than I do, to permit you to continue to chair this committee as long as you like. I am going to have to leave, but we are not going to close it down because of your tolerance and patience while I discussed a few things with Mr. Conner. Please feel free.

Senator SIMPSON. Mr. Chairman, it will not be another 10 minutes. I do appreciate that courtesy. I really do. Thank you, Dennis.

So your answers, Mr. Neier, can be a shred longer now.

Mr. NEIER. My answer is——

Senator SIMPSON. Not now. Wait, for God's sake.

Let me ask you this. You said if someone returns to a conflict zone, they "take their life in their own hands," I believe was your phrase.

Mr. NEIER. Yes.

Senator SIMPSON. ICM screened at least two-thirds of all returnees, and only 25 percent of them were returning to those zones. Why should we suspend the deportation of the other 75 percent? It seems like an interesting question, does it not?

Mr. NEIER. Senator, most people who come from conflict zones know very well that they cannot return to those zones, and therefore, it is anything but surprising to me if you suggest that they were not trying to go back to those zones. There is no possibility of their going back to those zones in the majority of the cases.

It is also true that ICM could not find many people afterwards, and I would say that there is a very good reason for that. That is, people who are in danger do not sit around waiting to be killed. The chances are that they take off again.

Senator **Simpson**. Well, I think that is very true, but we can also assume that those who are in the United States know that they will not be killed when they go home, too. I mean, that is why we are in this particular issue.

Let me come back to this. You know my deep feelings on the issue, and Senators Kennedy and DeConcini have been kind to give me this additional opportunity of a hearing. Again, I am appreciative.

HOW TO ASSUME EVD RECIPIENTS "GO HOME?"

What would you who support the bill propose and support to ensure that these beneficiaries of this extraordinary action of EVD, suspension of deportation, return home when the status is ended? How will you assist in that process?

Mr. **Neier**. We do not have the capacity to assist in that process beyond reporting what the human rights situation is. That is what we consider our function to be.

I would point out to you, Senator, that the Bureau of the Census has tried to monitor the movements of persons from Central America. I recall seeing the statistics that were compiled by the Bureau of the Census with respect to Nicaragua at the time that there was the civil conflict in which the last Somoza was overthrown. The figures that I saw from the Bureau of the Census showed that close to a hundred thousand Nicaraguans left Nicaragua during the last year of Somoza, and approximately a similar number returned to Nicaragua after that war was over. Then an out-flow from Nicaragua started again after a variety of abuses took place, and after a war got under way again in Nicaragua.

But it struck me as very interesting that, when a war ended virtually the same number of people who had left, according to the Bureau of the Census, returned to the country. It did tend to suggest that the people were actually rather eager to be in their own country, and not to stay wherever they had gone.

Mr. **Posner**. Senator, if I can just add to that a broader point. Senator Kennedy earlier in this hearing this morning said that this is certainly not the first time. There have been 16 or so examples where EVD has been, in fact, applied. I think the question you are asking is a valid one, but it has to be applied to every one of those situations. What we do in Afghanistan, what we do in Ethiopia, ought to be the same thing that we do with regard to Salvadorans. These are not new problems.

As a general proposition, what the UNHCR has found, what we have found, what others who have looked at refugee populations have found is that there is a significant portion of people who flee their country during times of instability who really want to go back home. I think that ought to be the premise upon which we operate.

You are certainly right and it cannot be denied that some people are going to make attachments here and are going to want to stay, but I think the premise of this legislation is that this is a temporary measure designed to deal with a situation in a state of turmoil.

Senator **Simpson**. Well, I think when you talk about Nicaragua, I think probably you are correct. But we are talking about people who have been coming here for years for economic reasons. That is the historical flow of Salvadorans to this country long before there was conflict. This is the second largest flow of illegal undocumented people to the United States of America before anything ever happened in El Salvador. That is the way it is. That is the——

Mr. **Neier**. Senator, can I ask one question?

Senator **Simpson**. If you can do it, yes, in a moment.

Mr. **Neier**. Senator, I do not know if you have ever visited the places in El Salvador where the displaced persons gather; but if you look at those half million, or 600,000 displaced persons, you see the most appalling circumstances humanly imaginable. It is not conceivable to me that those people left their homes in El Salvador to go to those places where the displaced gather out of any economic reason. They had to go there because they were desperately afraid. There is no other possible reason that they would subject themselves to those horrendous circumstances.

I suggest, Senator, that if people have subjected themselves to the misery of those displaced persons camps and instant slums of the displaced in El Salvador, that the same motivations may also be in effect in prompting some of them to come to the United States.

Senator **Simpson**. Well, those slums, as you describe them, are part of the support of this nation toward the El Salvadorans. We inject a good portion of our own money to the displaced camps, and we will do more.

Mr. **Neier**. Yes.

Senator **Simpson**. So we have not turned our back on that. Let us try to keep the high drama and the fear—I have always said in this issue if we can just drain the fear, guilt, emotion and racism out of these issues, we may get the job done, and it works as soon as you let them kind of squeeze that out of the sponge. So let us get back to things.

I am not trying to inject that into this, and let us not talk about that. We support those displaced camps thoroughly. If we need to do more, we will. I recognize——

Mr. **Neier**. Senator, my only point is that people go to those displaced person camps for a reason.

Senator **Simpson**. I am aware of that.

Mr. **Neier**. And those reasons apply to their leaving the country as well as to going to those camps.

Senator **Simpson**. If you would please, then, provide us evidence of the human rights violations in the displaced persons camps, I would appreciate that and make that part of the record.

Mr. **Neier**. We would be glad to do that.

Senator **Simpson**. If you are only objecting to the camps' living conditions, we can increase the present U.S. contribution. There would not be one of us that would vote against that. I would like some evidence of that.

Mr. **Neier**. We published a report specifically dealing with that subject. We will be glad to submit it for the record.

[The aforementioned report can be found in committee files.]

LIMITS TO EVD RESPONSE

Senator **Simpson**. Back to Mr. Posner, just a question or two. I have watched you operate, and I have a great regard for you. I have heard you testify before.

We recognize the armed conflict occurring in El Salvador, and I fully recognize that there are parts of El Salvador that are not very good places to live today. I also recognize there are some two dozen armed conflicts occurring throughout the world right now today.

Where and on what basis do you draw the line? Should we then grant this extraordinary grace to Afghanistan, Sudan, Mozambique, Angola, Cambodia, Iran, Iraq, Lebanon? And the list goes on. The population of those countries is 100 million human beings, and I appreciate all of the sensitivities of that. I appreciate your sentiments and your concerns, but there is no way that this country can handle things in the world on that basis. We might want to do it here, but the citizens of the United States would find it indigestible.

Now, that is the way it is. It is indigestible. Do you know what the toughest part of the Immigration Reform and Control Act was? Amnesty. They did not like it a damn bit. It passed the U.S. House of Representatives by seven votes. Anybody that is not watching and reading the signals is missing something.

Now, that is not the way I prefer to do it, but somewhere along the line you have got to button your shirt before your heart falls out. Somewhere along the line you have to be realistic. Somewhere along the line you just do not overwhelm the systems of the United States. Now, that is the way it is.

I would like your comment on who is going to do the picking. That is what we tried to get away from when Senator Kennedy was putting together the Refugee Act: parole authority, country-specific, all those things. Now, here we are.

Mr. **Posner**. Senator, I share many of your concerns in that regard, and I certainly appreciate the difficulty of the problem. It seems to me, however, that we have to rely on a case-by-case evaluation. That is probably not going to satisfy you, and in some ways it does not satisfy me. But I think we do have to look at several factors. One is the need.

When you talk about the Sudan or Mozambique, the reality is that there are people fleeing those situations, but they are going to neighboring countries. I think we ought to encourage that. We ought to work with international agencies more than we do now, perhaps, to encourage alternatives to people coming to the United States. But there are some situations where we are faced with the reality, and the reality in this situation, El Salvador, is that tens of thousands, probably hundreds of thousands of people have come here. The alternatives with which we are faced is to send them back to a situation that is unstable and unsafe or to keep them here utilizing some temporary safe haven status. I opt for the safe haven not because I think it is a perfect alternative, but because I think the other alternative is worse.

It is a remedy that Congress ought to be involved in, perhaps more than it has been. EVD has been a sort of administrative remedy that the INS and Justice Department have dealt with on their own in some cases. Perhaps you all ought to be looking at Poland and Afghanistan and whatever other situations come up in the future.

To me this is not a tough case, though; this is a clear case. El Salvador represents a situation of extreme instability and where there is a need that has been presented that we have to deal with today.

IS CASE-BY-CASE CONSIDERATION PREFERABLE?

Senator SIMPSON. Well, would you then support a case-by-case consideration of suspension of deportation of El Salvadorans rather than a blanket grant?

Mr. POSNER. As I said before, I think it is a difficult process of trying to figure out who is going to be subjected to persecution.

Senator SIMPSON. It is not diffi~~cult when~~ you do it case by case.

Mr. POSNER. It may be because part of the problem in El Salvador is that there is a civil war going on. We are not just talking about who is likely to be persecuted because of their political beliefs or because they belong to a trade union or because of their ethnicity or religion. We are talking about a situation of armed conflict, and part of the frightening aspect of El Salvador is the arbitrariness of the violence. It may not be possible to evaluate which of the tens of thousands of people we send back are going to be victims of that violence.

Senator SIMPSON. I want to enter into the record an item called "The International Human Suffering Index." It is published by the Population Crisis Committee. It shows all the countries of the earth with regard to their extent of human suffering. El Salvador is 50th on the list. The names of the countries that are up above that I assume would all have to receive this kind of attention if you were going to be consistent. That is, I think, an interesting chart, the human suffering index. It does not really get into the issues of anything other than what is their income, the definition of human suffering and mortality and growth rates.

[The information of Senator Simpson follows:]

THE INTERNATIONAL HUMAN SUFFERING INDEX

By Sharon L. Camp, Ph.D. and J. Joseph Speidel, M.D., M.P.H.

The Human Suffering Index statistically rates living conditions in 130 countries. It was created to measure, in a single figure, differences in living conditions between countries. The presentation also allows a side-by-side comparison of rates of population increase and human suffering.

Each individual country index is compiled by adding 10 measures of human welfare related to economics, demography, health and governance: 1) income, 2) inflation, 3) demand for new jobs, 4) urban population pressures, 5) infant mortality, 6) nutrition, 7) clean water, 8) energy use, 9) adult literacy, and 10) personal freedom.

Each of the 10 measures of well-being is ranked from 0 to 10—the most distressful being 10. For example, Ethiopia receives a rating of 10 in the Infant Mortality Index because 152 Ethiopian children under one year of age die out of every 1000 born, one of the highest rates in the world.

The 10 measures are added together to obtain The Human Suffering Index. Those countries with high infant mortality rates, low gross national product per capita, poor supplies of clean drinking water, etc., scored high on the Index—close to 100.

Summary of Findings

Living conditions are worst in Mozambique, followed by Angola, Afghanistan, Chad, Mali, Ghana, Somalia, Niger, Burkina Faso, Central African Republic, Zaire, Benin and Malawi.

The most comfortable countries to live in are Switzerland, West Germany, Luxembourg, the Netherlands and the United States, in that order.

Countries rated in The Human Suffering Index were grouped in the following quadrants:

Extreme Human Suffering: The 30 countries with 11 percent of the world's population or 519 million people registered 75 or greater on The Human Suffering Index.

Of these countries, 24 are in Africa; 6 are in Asia. None is in Europe or the Western Hemisphere.

High Human Suffering: The 44 countries with 58 percent of the world's population or 2.85 billion people registered between 50 and 74 on The Human Suffering Index.

Of these countries, 16 are in Africa; 16 are in Asia; 11 are in Latin America; 1—Papua-New Guinea—in Oceania; none is in Europe.

Moderate Human Suffering: The 29 countries with 10 percent of the world's population cr 491 million people recorded an index between 25 and 49, indicating moderate levels of suffering.

Of these countries, 10 are in Asia; 7 are in Europe; 11 are in Latin America. Mauritius is the only African country in this category.

Minimal Human Suffering: The 27 countries with 21 percent of the world's population or one billion people recorded

24 or lower on The Human Suffering Index.

Of these countries 20 are in Europe; 2 in Oceania—Australia and New Zealand; 2 are in Asia—Japan and Singapore; 3 are in the Western Hemisphere—U.S., Canada, and Trinidad and Tobago.

Human Suffering and Population Growth

Every country with extreme levels of human suffering on our Index has a serious population problem. Fully 30 of 31 countries with the highest suffering levels had an annual population growth rate between 4.2 and 2 percent. That means that their population will double every 17 to 35 years.

Statistically, the annual rate of population growth of a country correlates very closely with a country's Index rating. For example, countries with low population growth rates are associated with low suffering ratings. Countries with high population growth rates are associated with high suffering ratings. The correlation was derived using the Pearson's r, a standard statistical test for relationships. The test found a high correlation between population growth and The Human Suffering Index (r = .83).

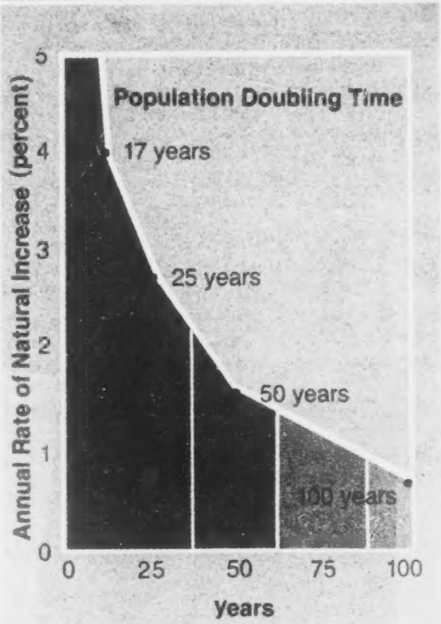
The Third World is growing by 2 percent per year and will double its population in 34 years, assuming its present population growth rate. Presently, the population of the more developed countries is growing at 0.6 percent per year and will double in 122 years.

The correlation between rapid population growth and human suffering is consistent with other studies which indicate that rapid population increase restricts economic and social progress for individual families and nations.

In mid-1987, the world's population will reach 5 billion and, if current trends continue, another billion will be added by 1998, primarily in those countries that are already struggling to provide for their present population and recording high and extreme suffering rankings.

In contrast, all countries which fall into the range of minimal suffering on the Index are experiencing low rates of population increase.

Relationship of Doubling Time to Rate of Natural Increase



This graph shows the relationship between the percent a population grows each year and the number of years required to double its size. For example, Italy growing at 0.1 percent per year will double its population in 693 years, whereas Pakistan, growing at 2.8 percent per year, will double its population in 25 years.

Human Suffering Indices

Gross National Product per Capita: According to data from the World Bank, an average Third World resident has $700 to spend in the cash economy each year compared to a resident of the developed world who has $9,500, or 14 times more.

GNP per capita is a good (if imperfect) indicator of a country's wealth and physical comfort. Occasionally, however, GNP per capita numbers are deceptive. This is true in countries where a large portion of the population is employed in subsistence agriculture and only marginally involved in the cash economy.

GNP per capita can also be a misleading measure for countries with wide gaps between rich and poor. For example, Brazil with a per capita GNP of $1,720 earned a rating of 7 on the income scale of 0 to 10. But Brazil also has one of the world's least equitable distributions of income. The average income of the wealthiest one-fifth of the population is 33 times higher than that of the poorest fifth. Because of inequitable income distribution, Brazil does less well on some of the social measures of well-being.

Average Annual Rate of Inflation: Economists call inflation the ultimate tax on the poor and the elderly because these groups are least able to increase their income and cope with price rises. In recent years, inflation of varying degrees has been an important problem in most of the world's countries, with some developing countries suffering from annual inflation rates of 200 percent and higher. Inflation is disruptive to the economic life of individuals and nations. Historically, high inflation limits real growth.

Inflation is also a measure of a government's ability to influence economic trends. Inflation figures from the World Bank show only a few countries—Japan, Singapore, West Germany, Austria and some non-market economies—have done well fighting inflation between 1973 and 1984.

Average Annual Growth of Labor Force: Based on data from the World Bank, this index provides an indication of how many jobs will have to be created annually between 1985 and 2000. It is an indirect measure of the current pressure on jobs and the potential for rising unemployment and underemployment. Official unemployment figures are not reliable measures of effective employment for most developing countries and tend to be highly misleading.

From 1985 to the year 2000, Third World countries need to create 540 million jobs for their fast growing labor force. On the other hand, the developed world needs to add less than 50 million jobs.

Unemployment and underemployment rates in some of the neediest countries are 50 percent or more of the labor force.

Average Annual Growth of Urban Population: According to the United Nations, 8 out of the 10 most populous cities will be in the Third World by the year 2000. Mexico City will have a population of 26.3 million; Sao Paulo—24 million; Calcutta—16.6 million; Bombay—16 million; Seoul—13.5 million; Shanghai—13.5 million; Rio de Janeiro—13.3 million; New Delhi—13.3 million. Tokyo, with a projected population of 17.1 million, and New York, with 15.5 million, will be the only cities in the developed world in the top 10 at the turn of the century.

Urban population growth is a consequence of high urban birth rates and rural to urban migration, the latter resulting partly from population pressures on farm land. Especially in countries with high rural population densities and low levels of rural development, high rural birth rates force millions of people to leave the land every year in search of a livelihood.

This tremendous influx into the cities aggravates overcrowding, pollution, underemployment and political unrest. It also contributes to the breakdown of essential services like sanitation, and overloads health and government services. Squatter settlements lacking in basic amenities cover 30 to 60 percent of many Third World capitals.

Infant Mortality: In the developing countries, 10 out of 100 babies die before the age of one, according to the United Nations Children's Fund (UNICEF). In the developed world, the rate is generally less than 2 out of 100.

The infant mortality rate is a highly sensitive indicator of health conditions, sanitation and the availability of family planning services. Infants are the most vulnerable members of society. Infant deaths are a principal component of life expectancy in all countries.

Better birth spacing through family planning in Third World countries could prevent 2 million infant deaths annually and use of family planning could save 200,000 maternal lives or about 40 percent of the mothers who die in childbirth each year.

Simple methods of oral rehydration and immunization could save many of the 10 million children now dying annually from diarrheal and infectious diseases.

The Daily per Capita Calorie Supply as a Percentage of Requirement: This index, based on data from the Food and Agriculture Organization and UNICEF, shows the contrast of shortage and overabundance. While other measures of nutritional status are equally important, caloric supply gives the broad outline of differences in food availability.

Failure to curb population growth expands demand for food and indirectly undermines increases in agricultural production. The cereal import bill for Africa, where The Suffering Index is the highest, climbed from $600 million in 1972 to $5.4 billion in 1983, a ninefold increase.

Access to Clean Drinking Water: Clean drinking water is one of the most important measures of sanitation. Water borne diseases—typhoid, cholera and other serious or fatal diarrheal diseases—are responsible for about one third of the deaths of children under five years old. Most of these diseases, although still widespread in many developing countries, have been virtually eliminated in developed countries with safe water supplies.

According to UNICEF and Global Water, in most developing countries, less than 30 percent of the population has access to clean water. In developed countries, the percentage is greater than 90 percent.

Energy Consumption per Capita: In 104 of 130 countries analysed, this United Nations' based index showing use of energy closely correlates with the per capita gross national product. However, in the non-market economies of Eastern Europe and the USSR high energy use contrasts with modest per capita GNP.

In rating countries on the energy index, care was taken not to reward countries for inefficient use of energy. Countries with exceptionally high use received no better a rating than countries whose more modest per capita consumption was considered adequate to meet household needs for lighting, telephones, labor saving appliances and reasonable industrial applications. Complete data on the number of households with electricity would have been a better measure, but such data does not exist.

Adult Literacy Rate: This figure, based on reports from UNICEF and varied U.S. government sources, provides a simple measure of educational attainment within a population.

In most developing nations, fewer than 50 percent of the adult population can read or write. About 70 percent of illiterates are women. Many development experts believe that the level of investment in human capital—the skills and knowledge of the population—is the single most critical factor separating advanced from less developed countries.

Personal Freedom: Some 1.7 billion or 36 percent of the world's population are free, according to assessments compiled by Freedom House. They conclude that 1.2 billion people in 57 countries are partly free and almost 2 billion people in 53 countries are not free. Although a more refined scale, i.e., one with additional increments, would have been preferable for the index, the Freedom House three-point scale provides the only respected ranking available for a large number of countries.

Freedom House considers a country free if it has freedom of the press and freedom to organize, particularly to organize political parties, trade unions, businesses, religious societies and churches. The index also takes note of whether citizens are free from government terror, free to travel, own property, marry, and are able to vote for more than one political party. Not a single country in the extreme range on The Human Suffering Index had personal liberties similar to those in the United States, Western Europe and Japan.

The 10 measures listed above were judged to be the best of those available, according to the team that assembled The Human Suffering Index. The sources of data were considered generally reliable, the data were standardized and available for over 100 countries, and the measure at least approximated some real indication of human welfare. A large number of other measures, some more sophisticated, were considered but rejected, most often because the number of countries covered was too small.

Additional measures considered for The Suffering Index included data on pollution, refugees, unemployment, underemployment, arable land, external debt, children in the work force, urban slums, income distribution, life expectancy, balance of payments, taxes, physicians per capita, school enrollments, composition of the labor force, war, birth rates and foreign exchange rates. All had relevance to distress and comfort in each country, but all had some weakness, duplicated measures already chosen, or did not cover enough countries.

The Human Suffering Index vividly shows that the majority of the world's people must endure lives of poverty and human misery. The suffering quantified by the Index can, in part, be traced to population pressures combined with inadequate attention to development. Development efforts such as family planning, health, and education could immediately ease the suffering of millions in the Third World. Investments in family planning and development are investments in everyone's future.

SCALES AND SOURCES OF INDICES

Per Capita Gross National Product in US$

Index Ranking: **10** rank = $250 and under; **9** = $251-$500; **8** = $501-$1,000; **7** = $1,001-$2,000; **6** = $2,001-$4,000; **5** = $4,001-$6,000; **4** = $6,001-$8,000; **3** = $8,001-$10,000; **2** = $10,001-$12,000; **1** = $12,001-$15,000; **0** = $15,001 and over.

Sources: The World Bank, *The World Development Report, 1986*, and United Nations International Children's Fund, *State of the World's Children, 1986* and *1987*. Other estimates obtained from PlanEcon, Inc. and varied U.S. Government sources.

Average Annual Rate of Inflation

Index Ranking (Percent): **10** rank = 50.1 and above; **9** = 30.1-50; **8** = 20.1-30; **7** = 14.1-20; **6** = 10.1-14; **5** = 8.1-10; **4** = 7.1-8; **3** = 6.1-7; **2** = 5.1-6; **1** = 4.1-5; **0** = 4 and below.

Sources: The World Bank, *The World Development Report 1986*, and United Nations International Children's Fund, *State of the World's Children, 1984* and *1986*. Estimates of nonmarket economies by PlanEcon, Inc. Other estimates obtained from varied U.S. Government sources.

Average Annual Growth of Labor Force

Index Ranking (Percent): **10** rank = 4.0 and over; **9** = 3.6-3.9; **8** = 3.2-3.5; **7** = 2.8-3.1; **6** = 2.4-2.7; **5** = 2.0-2.3; **4** = 1.6-1.9; **3** = 1.2-1.5; **2** = 0.8-1.1; **1** = 0.4-0.7; **0** = 0-0.3

Sources: The World Bank, *World Development Report, 1986*, and the Embassy of Iceland, Washington, D.C.

Average Annual Growth of Urban Population

Index Ranking (Percent): **10** rank = 5.6 and over; **9** = 5.1-5.5; **8** = 4.6-5.0; **7** = 4.1-4.5-; **6** = 3.5-4.0; **5** = 3.1-3.5; **4** = 2.6-3.0; **3** = 2.1-2.5; **2** = 1.6-2.0; **1** = 1.1-1.5; **0** = 1.0 and below.

Sources: The World Bank, *World Development Report, 1986*, the Embassy of Iceland, Washington, D.C., and varied U.S. Government sources.

Infant Mortality Rate per 1000 Live Births

Index Ranking: **10** rank = 141 and above; **9** = 131-140; **8** = 121-130; **7** = 111-120; **6** = 91-110; **5** = 71-90; **4** = 51-70; **3** = 31-50; **2** = 21-30; **1** = 10-20; **0** = 9 and under.

Sources: United Nations International Children's Fund, *State of the World's Children, 1986* and *1987*.

Daily Per Capita Calorie Supply as Percent of Requirement

Index Ranking (Percent): **10** rank = 80 and less; **9** = 81-85; **8** = 86-90; **7** = 91-95; **6** = 96-100; **5** = 101-105; **4** = 106-110; **3** = 111-115; **2** = 116-120; **1** = 121-125; **0** = 126 and over.

Sources: United Nations International Children's Fund, *State of the World's Children, 1986* and *1987*, the Food and Agriculture Organization, *The State of Food in Agriculture, 1984*, and the U.S. Department of Agriculture.

Percent of Population with Access to Clean Drinking Water

Index Ranking (Percent): **10** rank = 10 and less; **9** = 11-19; **8** = 20-28; **7** = 29-37; **6** = 38-46; **5** = 47-55; **4** = 56-64; **3** = 65-73; **2** = 74-82; **1** = 83-91; **0** = 92-100.

Sources: United Nations International Children's Fund, *State of the World's Children, 1986* and *1987*, and Global Water, Washington, D.C.

Energy Consumption Per Capita in Gigajoules

Index Ranking: **10** rank = 5 and less gigajoules consumed; **9** = 6-10; **8** = 11-30; **7** = 31-50; **6** = 51-70; **5** = 71-90; **4** = 91-110; **3** = 111-130; **2** = 131-160; **1** = 161-190; **0** = 191 and over.

Source: The United Nations, *Energy Statistics Yearbook, 1984*.

Adult Literacy Rate

Index Ranking (Average of Male and Female): **10** rank = 49 and under; **9** = 50-54; **8** = 55-59; **7** = 60-64; **6** = 65-69; **5** = 70-74; **4** = 75-79; **3** = 80-84; **2** = 85-89; **1** = 90-94; **0** = 95-100.

Sources: United Nations International Children's Fund, *State of the World's Children, 1986* and *1987*, the Embassy of Iceland, Washington, D.C., and varied U.S. Government sources.

Personal Freedom/Governance

Index Ranking: **10** rank = Not Free; **5** = Partly Free; **0** = Free.

Source: Freedom House, *Freedom at Issue*, January-February, 1987.

PCC Estimates

e = PCC estimates are based on interviews with government officials and development experts from private organizations.

Population Size and Rate of Natural Increase - Data used are mid 1986 estimates from *1986 World Population Data Sheet*, Population Reference Bureau, Inc.

DEFINITION OF TERMS

PER CAPITA GNP:
The market value of the final output of goods and services of a country divided by its residents.

AVERAGE ANNUAL RATE OF INFLATION:
The growth rate of the gross domestic product (GDP) implicit deflator, for each of the periods. The GDP deflator is first calculated by dividing, for each year, the value of GDP at current purchaser values by the value of GDP at constant purchaser values, both in national currency.

AVERAGE ANNUAL GROWTH OF LABOR FORCE:
The labor force comprises economically active persons aged 10 years and over, including the armed forces and the unemployed, but excluding housewives, students and other economically inactive groups.

AVERAGE ANNUAL GROWTH OF URBAN POPULATION:
The annual percentage by which a city adds to its size by natural population increase or migration.

INFANT MORTALITY RATE:
The annual number of deaths of infants under one year of age, per 1,000 live births.

DAILY PER CAPITA CALORIE SUPPLY AS PERCENT OF REQUIREMENT:
The calories needed to sustain a person at normal levels of activity and health, taking into account age and sex distributions, average body weights, and environmental temperatures.

CLEAN DRINKING WATER:
The percentage of the population with access to disease-free drinking water.

CONSUMPTION OF ENERGY PER CAPITA:
A combination of renewable and non-renewable fuels used to fulfill social and economic needs per person in a given year.

ADULT LITERACY RATE:
The percentage of persons aged 15 and over who can read and write.

PERSONAL FREEDOM/GOVERNANCE:
The degree of political right, such as free elections and civilian rule, and civil liberties, such as a free press and independent judiciary, accorded a given nation's people.

Senator SIMPSON. That is all I am saying. I have often said this—and you are being patient—if you do not like what the President is doing in Central America, that is great. Say it and stick with it. But do not get that into this kind of a situation, and that is what I see happening here. The sanctuary movement was part of that. I will not ask you any questions about that. You were deeply involved.

But, you know, if you do not like what is going on, why, just step right up, belly up to the bar, and say, "I think this is crazy." But for heaven's sakes, let us quit trying to select this one country and then Nicaragua thrown in, too, which is going to be part of it, and say that it is not happening in 30 other countries of the world. Let us get honest with ourselves and quit jollying each other around on this baby.

Mr. NEIER. Senator, can I respond to that?

Senator SIMPSON. Yes.

Mr. NEIER. I think that that has to be turned back though, as well, because now extended voluntary departure is ending as far as Poland is concerned.

Senator SIMPSON. Oh, I do not believe it will at all end. You do not believe that.

Mr. NEIER. Well, okay.

Senator SIMPSON. No, you are not going to help it end, are you?

Mr. NEIER. No. I am not going to help it end.

Senator SIMPSON. Are you going to think that that should stop? Is that what you are saying?

Mr. NEIER. I would have a hard time justifying it for Poland today.

Senator SIMPSON. I think you would.

Mr. NEIER. But I would say that in the period following the imposition of martial law in Poland when people were detained for extended periods without charges and without trial in rather awful circumstances, it seemed to me that there was a very good reason for providing extended voluntary departure in the case of Poland.

It seems to me, however, that part of the reason that the Administration has been so antagonistic to extended voluntary departure for El Salvador is not only its concern about maintaining the integrity of the immigration system, but it has also been a way of saying that the human rights situation in El Salvador is much better than you critics portray it as being. It is a way of justifying the Administration's general policy.

Now, whether you favor the Administration's policy or oppose the Administration's policy, it probably is not a good idea to decide a question of this sort as a matter of furthering one or another policy. It is not a good idea to favor this as a way of furthering a criticism of the Administration's policy, and it is not a good thing to favor it or to oppose it as a way of supporting the Administration's policy.

I think those of us, or some of us, at least, who favor this believe that the Administration was so adamant in opposing it because it saw extended voluntary departure for Salvadorans as an implicit criticism of its policy. It did not look at it on the merits. It looked at it in terms of its overall policy in Central America.

Senator SIMPSON. Well, that is worthwhile and I hear what you are saying, but it is the President of the country democratically elected who is telling us that there is no significant turmoil to justify EVD, and that he would like to do it on economic grounds only. That is the President of the country, of El Salvador, democratically elected.

Mr. NEIER. But that is because it is also a comment on his policies. It is an implicit criticism of his policies if it is accepted that people need extended voluntary departure on security grounds. You cannot very well ask him to be the person who is championing the need for extended voluntary departure to protect people against his own government.

Senator SIMPSON. Well, he is just a silly old fool who is a democratically elected President of his country, and he happens to be a democratic Socialist. Silly, is it not.

Mr. NEIER. One can admire him as much as one wants, and one can disagree with him at the same time.

Senator SIMPSON. I know that. We have enough problems in our own country. We ought to be paying attention to those.

Let me ask you this: Did you ever stop to think—and this is not to inflame; it is just kind of like to throw things in while everybody is playing the game—how many people were out of Poland at the time of martial law who had received vacation visas and temporary visas to leave the country who now say that they would be those who would be persecuted if they returned? Their government was obviously not fearful of them when it granted them that status. But there are a few people like that in the world.

Mr. NEIER. Senator, one of the people I know best who was in that category is a woman who worked for Solidarity's press service. It happened that she was out of the country at the time that martial law was declared. She was in Madrid on vacation. She had gotten a visa to allow her to take a vacation. All of the other people who worked for Solidarity's press service were interned. She did not go back to Poland. She lives in the United States today. It happens to be somebody who I come in contact with professionally on a day-in, day-out basis. She could have gone into an internment camp. She happened to be out of the country on a vacation when martial law was declared.

I would consider that somebody like that would qualify very well for something like extended voluntary departure.

Senator SIMPSON. I would not challenge that one whit. I am talking about people who have nothing to do with the Solidarity movement and were outside of the country at that time. Those are the people I am talking about.

A couple more questions, and then I will conclude. I would like to ask Roger Conner, why are you willing to rely on the ICM conclusions when they did not contact 100 percent of the returnees? I would be interested in that.

Mr. CONNER. The interesting thing, Senator Simpson, is that the ICM made returnees aware of their presence, made returnees aware of their desire to know what was going on with them, and were obviously a place to which somebody who was in trouble could turn. Someone who had been put in jail, for example, by the government, the family obviously seeking help and to try to bring pressure on the government to let them help would be looking for help, and who would they be looking to? Organizations like this that have access to power to help the people, the organizations that oppose the current government, those seeking to embarrass the current government. Those are the organizations that have every incentive to take cases, even cases that are not true, and exaggerate them and to call them to the attention of someone like ICM.

So the fact that ICM was there making itself known to the returnees, making itself known as a place to which people could turn for help, is a reason why the ICM figures are not likely to be understated. If anything, they are going to tend to overstate the responses of people who let them know that they are in some sort of trouble and seeking out any means of help in a storm.

The other reason I would cite is that ICM is the only organization trying to obtain information about this subject that is not paddling on the other side of the canoe. They are the only organization that does not have an established and firm policy as to the Reagan Administration's Central American policies.

COUNTING EVD RECIPIENTS AGAINST IMMIGRATION QUOTAS

Senator SIMPSON. Well, one final question. How do you feel about—being straightforward about this—counting the beneficiaries of this extraordinary measure of legislation as immigrants and allowing them, then, to remain under the immigration quotas, and as they return to their country when the conditions change, we simply adjust the legal immigration situation at that time? What is your thought about that?

Mr. POSNER. Senator, I think we have to view this in the same way that we viewed other situations of EVD. We have not done that with refugees from Afghanistan, people coming here who are fleeing a horrendous civil war. We have not done it with Ethiopians; we did not do it with Ugandans or Lebanese Christians. It seems to me that if we want to have a discussion after this bill has been considered and passed, I would urge this Subcommittee to take a look at how we deal with the question of temporary refuge. But it seems to me that to re-evaluate procedures and apply new rules in this situation different from those relied on in the past with other similar situations is a mistake.

Senator SIMPSON. Well, I think that is something we want to look into. It is not like the countries you mentioned we are talking about. As I say, we have never had an illegal population of migrant people from Afghanistan into the United States. That is not four or five hundred thousand people. The figures are not there. This is quite different from other EVD grants. This one would be statutory, and here we go. That is exactly what we were trying to get away from when we did the Refugee Act, trying to leave it to administrative activity.

But I want to tell you I want to thank you very much. It is a provocative, gut-hard issue, but somewhere out in the line we had better be consistent. Because if we start it statutorily and say that it is temporary, then watch what happens when they say it is ready to go back. Nobody is going to say that. We are not good at sending people back to anywhere. We only deported 24,000 people last year, and you would think we had deported millions if you read the outpouring from some groups. Twenty-four thousand human beings deported legally from the United States. Of course, a million six went back voluntarily.

Let us kind of remember that we are so compassionate that we must be cautious. That does not mean we close our hearts or our bosoms or turn xenophobic or anything else. But that is one thing that we need to pay attention to.

I want to thank you very much, and on behalf of Chairman Kennedy and Senator DeConcini, I again extend my appreciation to them and to this fine staff who has always worked in a very extraordinary, adept, bipartisan fashion. I thank them.

That will conclude the hearing.

[Whereupon, at 12:37 p.m., the subcommittee was adjourned.]

APPENDIX

United States Department of State

Assistant Secretary of State
for Inter-American Affairs

Washington, D.C. 20520

March 2, 1987

Dear Mr. Chairman:

Thank you for your letter of September 16 regarding the status of Central Americans in the United States. Please forgive the long delay in our response.

I appreciate your concern for the Nicaraguan citizens who are fleeing a country which is becoming ever more totalitarian in its treatment of its own citizens. Increasing numbers are leaving, or joining the democratic resistance, as the Sandinista regime, in betrayal of the revolution, tightens its grip, just as more than 1.2 million people have left Cuba because of a political system which represses and stifles its citizens.

Those fleeing Nicaragua are leaving a deteriorating situation. The Sandinistas are increasing repression through censorship, restrictions on political activities, harassment of the Church, and suspension of fundamental civil liberties. It is now illegal to leave Nicaragua without permission, and those who sought haven abroad are considered suspect upon their return. Given our policy toward Nicaragua, it would be unconscionable to force the return of these people to the control of a regime which deprives them of basic liberties and which might treat them as traitors. Although we have not implemented a blanket measure as called for in HR4893, we believe that a sympathetic case-by-case review is appropriate at this time.

The situation in El Salvador, on the other hand, continues to improve dramatically. As you mentioned in your letter, President Jose Napoleon Duarte is a man committed to peace and democracy. Repeated studies of the treatment and condition of deported Salvadorans have disclosed no persecution upon their return to El Salvador and indicate that few were even victims of random violence (only four of 3,812 surveyed over a 13-month period had died, two of natural causes, one in a barroom brawl, and one in an aborted attempt to hold up a liquor store).

The Honorable
Joe Moakley,
Chairman,
Subcommittee on the Rules of the House,
Committee on Rules,
House of Representatives.

It is unfortunate that proponents of extended voluntary departure (EVD) and of the "sanctuary movement," while asserting that the plight of refugees is their only concern, continue to espouse the view that things have not improved in El Salvador, that the Duarte Government is unwilling or unable to curb human rights abuses and that U.S. military assistance is prolonging the conflict and exacerbating the problems of that troubled country.

The facts belie those claims, showing instead that the social and political conditions in El Salvador have improved markedly under President Duarte, with the help of U.S. aid, both military and humanitarian. Although El Salvador has historically reported high levels of criminal violence, political violence has declined markedly and is generally confined to areas where the FMLN guerrillas operate most aggressively. Contrary to your assertions, there is no evidence that "random violence resulting from the war is commonplace." During the first ten months of 1986, approximately 206 civilians died due to apparently political violence or in military actions; more than half of those deaths were attributable to guerrilla, not security force violence. Eighteen persons were killed as a result of abuses of authority by civil defense or security forces. During the same period, 478 people were killed in criminal violence.

While political violence levels were considerably higher in years past, when you first introduced your bill, danger to civilians is certainly not at this time comparable with the situations in Lebanon or Uganda. Given El Salvador's population, its total homicide rate is only slightly higher than that of Mexico or Trinidad and Tobago, two countries not at war. Nor is El Salvador governed by repressive, often Soviet- or Cuban-dominated regimes such as is the case in Afghanistan, Ethiopia, Poland, and Nicaragua. Abuse of authority by civil defense or government forces is now being punished in El Salvador: during the past two years, 1,806 members of the security forces have been dismissed for crimes and abuse of authority; 201 have been turned over to the courts for prosecution of crimes and human rights violations against the public. Three out of four asylum applicants now claim they are fleeing guerrilla violence, according to the Department's asylum officers.

The United Nations Special Rapporteur for Human Rights in El Salvador, in his 1986 report to the U.N. General Assembly, lauded the government for "increasingly significant and commendable results in the crucial area of respect for the life of persons both in non-combat situations and in or as a result of combat." The general conditions in El Salvador, a constitutional democracy where freedom of expression is well established and where the political and human rights situations have improved vastly since you first introduced your legislation three years ago, do not support suspension of deportation for Salvadorans. The situation has improved so much that the U.N. High Commissioner for Refugees (UNHCR) reports that more than 4,000 Salvadorans living in other Central American countries under UNHCR protection, including Nicaragua, have returned to El Salvador since 1983.

Why then are there so many Salvadorans coming to the United States? As you know, the economic situation throughout most of Latin America and the Caribbean has created a massive movement of people seeking to better their lives, just as our forefathers did. This migratory movement has led to the current problem of millions of undocumented aliens from many lands who live in fear of detection and compete for jobs in a tight employment market. As you well know, Congress passed historic legislation in 1986 to curb illegal immigration and address the plight of undocumented aliens. Since approximately 67 percent of all Salvadorans would like to emigrate to the United States, according to 1985 Spanish International Network poll, it is clear that EVD status for Salvadorans would draw even greater numbers of undocumented aliens to this country. It would seem, then, that EVD for Salvadorans would work at cross purposes with the new immigration law, further encouraging evasion of U.S. immigration law and procedure to enter the U.S.

Virtually all available evidence indicates that the vast majority of Salvadorans are here for economic reasons. This evidence includes immigration trends to the U.S. and neighboring countries prior to the outbreak of violence; deportees' statements to independent interviewers as well as Embassy consular officers; and the failure to take advantage of refuges within El Salvador and in neighboring countries. In that motivation, they are joined by millions of Mexicans, Peruvians, Colombians, Dominicans, Trinidadians, Chinese, Koreans, and Filipinos. Just as is the case with these nationalities, as more Salvadorans come to the U.S., they tend to attract relatives, further swelling the numbers of undocumented aliens. Approximately 90 percent of all recent asylum applicants stated they had relatives already in the United States. The limited number of immigrant visas available under the law (we issued more than 8,000 to Salvadorans last year) increases the incentive for family members to circumvent the law and come across the land border illegally. EVD would make the illegal immigration route even more attractive to Salvadorans yearning to find employment and reunite with undocumented family members, thus encouraging lawbreakers and undermining the legal immigration process established by Congress.

And who can blame them? El Salvador is approximately the size of Massachusetts, yet has a population of five million, a population density unequalled in the Hemisphere. With a three percent annual population growth rate it is one of the most land-poor countries in the world. Prior to the outbreak of violence, an estimated 100,000 to 350,000 Salvadorans had already migrated illegally to the U.S. The 300,000 Salvadoran residents of Honduras, competing for land and jobs there, were a significant factor in the bloody 1969 "Soccer War." In 1979, the outbreak of civil warfare obviously had an effect on immigration patterns. Fighting in the areas of greatest guerrilla persistence caused people to leave their homes, although most of these displaced seem to have gone to refugee camps in neighboring countries and in El Salvador itself, where approximately 350,000 are in government and church operated camps. Many fled to the capital city, where there is little violence and more opportunity (since the earthquake, increasing numbers are leaving the city and returning to their homes in areas secured from guerrilla depredation by the government).

Much of the blame for the current economic malaise in El Salvador can be laid directly at the feet of the FMLN/FDR insurgents who have undertaken a campaign of economic sabatoge, causing more than $1.5 billion in damage to the economy since 1979, approximately equal to all U.S. assistance during the same period. Unemployment is between 40 and 50 percent. Inflation is running at 40 percent. Both the U.N. Special Rapporteur and El Salvador's Archbishop Rivera y Damas have strongly condemned these tactics.

Obviously, the way to improve the economic as well as the general situation is to bring the war to an end as soon as possible, either through negotiations within the democratic process or, unfortunately, militarily. However, the FMLN/FDR - which is supported materially and politically by some U.S. citizens, including members of the "sanctuary movement" - consistently and adamantly spurns all offers by President Duarte to incorporate them into the democratic political process. It is an unfortunate fact that supporters of the FMLN/FDR are only prolonging this vicious conflict, increasing the suffering of the Salvadoran people, and preventing the development of conditions which would encourage economic migrants to return to their native land.

Whenever individual Salvadorans can demonstrate a well-founded fear of persecution, they are granted asylum status. Over the past three years, in absolute terms, Salvadorans received the fifth highest number of asylum approvals. In proportion to its population, El Salvador is third in terms of number of approvals. The Salvadoran approval rate during the period is just below that of Cuba. While many opponents of the Administration's policies have criticized the "low" rate of approval for Salvadoran asylum applicants, I would note that the UNHCR, during the period from February 1 to December 15, 1982 found that only 242 of the 3,694 Salvadorans who sought UNHCR help in Mexico could be recommended to the Mexican authorities for asylum status. This was during the height of the violence in El Salvador. The U.S. ratio of approvals to applications is low in comparison to that of some other countries in part because the INS has been under court order for several years to advise every Salvadoran of his or her right to asylum. This is not done for any other national group. Thus, the numbers of asylum applicants, in relation to total population, have been far higher than that of most other nations, including Iran, Poland, Afghanistan and Ethiopia. Salvadoran migrants are well aware that deportations are suspended while an asylum application is pending. The process takes two to three years and certainly provides effective protection, including full judicial due process, to anyone who claims a fear of returning to El Salvador. This protection and the fact that the situation in El Salvador has improved dramatically since President Duarte's election, and continues to improve, make EVD unnecessary.

I agree that the protection of refugees is neither a partisan nor a political issue, but a humanitarian issue. I have said in the past that conditions did not warrant extension of EVD to Salvadorans. Since the first introduction of your bill, the establishment of democratic government, freedom of speech and expression, the right to vote, an unfettered labor movement, vast improvements in the human rights situation, the movement of people back into formerly conflictive areas, and the much diminished intensity of the conflict all graphically demonstrate the vastly improved conditions in El Salvador.

Sincerely,

Elliott Abrams

Elliott Abrams

I would be happy to discuss this with you
at any time, and I appreciate your
continuing interest in this humanitarian
matter -- even though our positions differ,
I know you are motivated by a desire to
help some people who need help.
EA

Boston University

University Professors
745 Commonwealth Avenue
Boston, Massachusetts 02215
617/353-4566

Elie Wiesel, *Andrew W. Mellon Professor in the Humanities*

April 28, 1987

Congressman Joe Moakley
221 Cannon Office Building
Washington, DC 20515

Dear Congressman Moakley:

I write to express my appreciation to you for continuing your efforts, reflected in H.R. 618, to provide for appropriate management of the troubling issue of displaced Salvadorans and Nicaraguans. The Congress should indeed accept your proposals for a General Accounting Office investigation and for a temporary stay of detention and deportation of certain Salvadorans and Nicaraguans pending consideration of the GAO report.

I am persuaded that such action is needed if we are to continue America's leadership role in rescuing refugees fleeing persecution in their homelands. Until ambiguities about current law and the situation faced by returnees in El Salvador and Nicaragua are clarified, we have a human and moral obligation to provide refuge to these displaced men, women, and children.

Those of us who are committed to the memory of those who died in the Holocaust because no refuge had been provided them are committed also to providing refuge for today's victims of oppression. It is that commitment that makes us feel grateful to you for your efforts.

Sincerely,

Elie Wiesel

EW/sig

Office of Legislative and Intergovernmental Affairs

Deputy Assistant Attorney General
Washington, D.C. 20530

June 30, 1987

Honorable Peter W. Rodino, Jr.
Chairman
Committee of the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to my attention that various stories in the Washington Post and other newspapers have reported that the Administration, through the Department, is planning to grant extended voluntary departure(EVD) to Nicaraguans. This story has had the effect of bolstering the arguments of those who believe that HR 618, which would extend similar status to Salvadorans and which is scheduled for markup before the House Judiciary Committee this morning, should be adopted. For that reason, I feel compelled to put confusion on this matter to rest. This Department's position on EVD for Nicaraguans, is unchanged. As previously stated, our position on the legislation is that we remain totally opposed.

Sincerely,

John R. Bolton
Assistant Attorney General
Office of Legislative Affairs

GENERAL DATA ON SALVADORANS AND NICARAGUANS IN THE U.S.

Number of undocumented in U.S. (est.):

Salvadorans: up to 750,000
Nicaraguans: up to 100,000

Number expelled from U.S. (Immig. Service FY 86 data):

Salvadorans:

deportations: 3687
exclusions: 27
otherwise required to depart*: 2357
TOTAL: 6071

Nicaraguans:

deportations: 155
exclusions: 5
otherwise required to depart*: 211
TOTAL: 371

Number granted asylum by INS (FY 87 through February):

Salvadorans:

granted: 10
denied: 380
approval rate: 3%

Nicaraguans:

granted: 649
denied: 92
approval rate: 88%

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* INS definition of "required departure": "The directed departure of an alien from the United States without an order of deportation. The departure may be voluntary or involuntary. . .and may or may not have been preceded by a hearing before an Immigration Judge." It does not include persons immediately turned away from the U.S.

ICM
INTERGOVERNMENTAL COMMITTEE FOR MIGRATION
COMITÉ INTERGOUVERNEMENTAL POUR LES MIGRATIONS
COMITE INTERGUBERNAMENTAL PARA LAS MIGRACIONES

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Information Paper

ICM's Reception and Counselling Program in El Salvador

On the basis of ICM's 35 years of worldwide experience in facilitating refugee resettlement, national migration, repatriation and reintegration of persons in need, ICM was requested by the Governments of El Salvador and the U.S. to set up a program under which reception and counselling services would be provided to Salvadorans upon their return to El Salvador from the United States.

Thus, in December 1984 ICM established reception and counselling facilities at the ICM office in the city of San Salvador and at the San Salvador airport.

The procedures of the program are as follows:

At Airport

- In the first instance, ICM staff go to the airport to meet all flights arriving from the United States. This is necessary insofar as ICM has no involvement in the return travel and is not therefore previously informed on which flights returnees from the United States will arrive.
- Upon arrival, the returnees are referred to ICM for registration and to conduct a preliminary interview to ascertain their immediate needs, and counsel and advise them on available ICM assistance.
- Where necessary, temporary identity documents are provided to the returnees in cooperation with the immigration authorities, and full assistance with customs formalities is given. Subsequently those returnees in need of ICM assistance are transported to the ICM office in San Salvador.

At ICM San Salvador Office

In the ICM office in San Salvador, a more comprehensive interview is carried out to enable the returnees to explain their needs, problems and personal situations and receive more personalized counselling. In all cases ICM offers inland transportation to their home or other destination of their own choosing in El Salvador, temporary accomodation and food overnight, as well as limited financial assistance as necessary. If individuals so wish, they are channelled to existing camps for displaced persons (run by church or government authorities). According to needs in individual cases, ICM refers the returnees to the competent medical authorities of El Salvador, voluntary agencies such as Project Hope, the local office of the International Committee of the Red Cross, and to other relevant Salvadoran authorities. Returnees who express a wish to resettle in another country are counselled about ICM humanitarian emigration programs.

WASHINGTON MISSION

Follow-Up Action

With a view to keeping in touch with the returnees, ICM hands them a series of questionnaires which they are asked to mail back to ICM. This is to permit them to report on their whereabouts and well-being and to let ICM know if they face any specific problems where ICM may be of assistance. Subsequently, reminder letters are sent to those who do not return the questionnaire within a given period of time. In addition, ICM employs a specialized polling agency to carry out wide-ranging surveys aimed at re-establishing contact with those returnees who have not communicated with ICM through the questionnaires. So far, five major surveys have been carried out covering the period 1 December 1984 to 31 August 1986. In addition, during the course of one survey some fresh leads enabled the positive tracing of 142 persons who had been untraceable during previous surveys. On each occasion on average, some 30 trained interviewers and supervisors travelled throughout the country for the purpose of tracing and interviewing the returnees or their relatives whenever feasible. Tracing action is exhaustive, spanning over a period in excess of two months. Returnees reporting security problems are referred immediately to ICM for follow-up action as appropriate.

All facilities offered to the returnees and all communications with ICM are on a voluntary basis. Personal information supplied by the returnees is kept strictly confidential. Essential personal information is provided only on a "need-to-know" basis to the polling agency.

If returnees indicate a need to emigrate to another country, ICM, under its ongoing emigration program, will refer them to those embassies which agree to examine their applications for immigration according to the merits of each case and according to criteria laid down by each receiving country.

Since the inception of the program, ICM had been receiving some 375 returnees each month. Over the past 8 months numbers have been steadily declining, to 170 in May, 1987. From 1 December 1984 to 31 August 1986 (period surveyed), ICM met 8,156 returnees at the airport. Subsequently, ICM re-established contact with 6,875 of those returnees who arrived during the above period, i.e. 84.29% of the total caseload. Contacts were made in certain cases up to 12 months after return. Of the 8,156 returnees, 3,509 returned spontaneously the questionnaire they had received from ICM upon arrival, while 3,366 returnees were contacted in person, or through relatives, friends and neighbors, in the course of five surveys and other follow-up action.

In 15.71% of the total caseload returned between 1 December 1984 and 31 August 1986, the returnees could not be located through the five follow-up surveys carried out. It is, therefore, not possible to provide any precise information on the personal situation of these 1,281 persons, except for the following general information: The impossibility of locating these 1,281 returnees after an exhaustive process was related to incorrect or incomplete addresses given to ICM on arrival (84.52%), to the inability of the surveyors to enter certain areas in El Salvador (7.65%) for geographical or security reasons, and to situations (7.83%) where the relatives, friends, neighbors, etc., contacted were unable or declined to provide information, or where it was not possible to establish with exactitude the identity of the returnees (e.g. in some cases several persons with the same name).

Taking into consideration the limitations of the data collected, as explained in the above paragraphs, the following general observations on the situation of the returnees may be made, through 31 August 1986.

- During the first interviews at the ICM office the large majority of the returnees indicated as primary motives for their departure their poor economic situation in El Salvador and the wish to find employment abroad. This indication was confirmed with those returnees with whom contact was maintained (84.29% of the overall caseload) through the surveys and other follow-up action.

- Of the 6,875 returnees who maintained contact with ICM, 65 alleged that they had problems relating to their security in El Salvador. ICM referred 29 persons to the relevant embassies for consideration under their special humanitarian resettlement programs and ICM's on-going emigration programs in El Salvador. Five of these cases have so far departed from El Salvador, 14 were rejected by resettlement countries on the grounds that they were economic cases, and 10 were still under consideration. Of those (36) remaining, in nine cases it turned out that their problems were of an economic nature or had otherwise been solved, ten had again left the country by their own means, one of whom has now already returned from the U.S. for a second time. One was reported to have committed suicide, two have not been retraced and in the remaining 14 cases ICM is actively seeking to re-establish contact.

- Over the period from 1 December 1984 to 31 August 1986, it was reported to ICM that the death of 12 returnees had occurred, four from natural causes (intoxication, heart attack, kidney disease, and one from unknown causes in the U.S. after his return to the States), one by suicide as mentioned above, and one in crossfire between the army and the guerrillas. Two returnees had been killed, one in a bar under disputed circumstances and the other in the process of robbing a store. One drowned, one was murdered allegedly by personal enemies, and one was reported having committed suicide by self-poisoning.

- ICM also learned, after the fact, that two returnees had been arrested upon arrival in San Salvador in connection with an incident during which U.S. military personnel were killed. These two returnees had never been seen by ICM.

- Some 26% of those returnees located by ICM through relatives or friends had again left El Salvador for the United States or other countries. A number of returnees have gone through the ICM facilities more than once, and several have made the trip from the U.S. more than twice.

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RPG REFUGEE POLICY GROUP
CENTER FOR POLICY ANALYSIS AND RESEARCH ON REFUGEE ISSUES

SAFE HAVEN:
POLICY RESPONSES TO REFUGEE-LIKE SITUATIONS

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This study was conducted under grants from the Rockefeller Foundation and the National Council of Churches. Dennis Gallagher was the director of the study and Susan Forbes and Patricia Weiss Fagen were the principal researchers.

In conducting the research for this project, we interviewed dozens of individuals concerned with asylum and safe haven issues -- U.S. government officials, officials of other industrialized countries, Congressional staff, representatives of intergovernmental organizations, representatives of voluntary agencies in North America and Europe, lawyers and legal scholars, and others.

Many of the issues described in this report were discussed at a conference, cosponsored by the Refugee Policy Group and the Johnson Foundation, held at the Wingspread Conference Facility in June 1986. Our thanks to conference participants for their contributions to our understanding of safe haven policies and practices. Members of the RPG Board and Advisory Council commented on drafts of this report, providing guidance on the policy issues raised herein.

We wish to thank all of those who have assisted us for their time and useful perspectives. Special thanks go to Mary Kritz who was our project officer at the Rockefeller Foundation.

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INTRODUCTION

During the past two decades, the United States has addressed many issues related to immigration: the bases for legal immigration; policies for the admission and assistance of refugees from overseas; options to control the flow of undocumented aliens to the United States; and, most recently, the standard to be used in determining if an individual should be granted asylum. There is one major issue that still goes unresolved, however: the direct arrival of people seeking a safe haven from potentially dangerous situations, particularly if they do not meet the refugee standard.

For the most part, the United States has responded to the needs of people fleeing life-threatening situations through resettlement programs. This country has resettled millions of refugees who left their countries of origin and sought asylum in neighboring countries before receiving permission to come to the United States. It was through resettlement channels that the large scale migrations of Displaced Persons, Hungarians and Southeast Asians took place. After years of ad hoc arrangements for resettlement, the Refugee Act of 1980 established permanent authority for the admission of refugees from overseas through a consultation process involving the President and Congress.

Less often has this country been a place of first asylum, with political exiles arriving unbidden on our shores. However, direct arrival of political migrants has been increasingly a factor in U.S. immigration policy during the past two decades, beginning with the Cuban exiles of the 1960's. In fact, within a few months of passage of the Refugee Act of 1980, 125,000 Cubans arrived on our shores and sought refuge. Since then thousands of others from throughout the world have sought safe haven in the United States. Some have sought political asylum; many others remain illegally in this country, requesting relief from deportation only if they are apprehended.

It is the contention of this report that U.S. policies for handling direct arrivals of migrants who have fled potentially life-threatening situations are inadequate. The system is neither able to offer sufficient access to the protections that the United States could afford on humanitarian grounds, nor does it allow for adequate control of U.S. borders. Its inadequacy, we argue, results in large part from a failure to come to terms with the fact that the United States is, and is likely to remain a country of first asylum for individuals who migrate for complicated reasons.

Difficulties in developing policies regarding humanitarian admissions are in large part the result of two conflicting impulses in U.S. attitudes towards immigration: on the one hand, a recognition that the United States is a country of immigration that has benefitted greatly from the contributions of newcomers; on the other, concern that the United States has insufficient control over who comes here and in what numbers.

An important element of both impulses is the recognition that immigration policies need to differentiate between individuals who migrate for economic or family related reasons and those who migrate for reasons related to their physical security. Although this country made no such differentiation in the pre-World War II period -- and many political exiles from Nazi Germany were thereby excluded from entry -- preserving special access for refugees, at the least, has been a dominant characteristic of U.S. immigration policy since then.

This report concludes that there is need for a mechanism recognized in statute through which the United States can respond to the presence of humanitarian exiles who are not covered under existing refugee law. Today, the United States, along with Canada and the nations of Europe, is a country of first asylum for individuals fleeing from Haiti, El Salvador, Guatemala, Nicaragua, Ethiopia, Afghanistan, Iran, Poland and others. Among these migrants are individuals who meet the definition of a refugee contained in U.S. and international law -- that is, they have a well-founded fear of persecution based on religious belief, race, nationality, political opinion or membership in a social group. Those that meet the definition may qualify for political asylum or withholding of deportation. If granted asylum, they may remain in the United States and adjust to permanent status after one year. If granted withholding of deportation, they will not be deported to the country in which they fear persecution but could be sent to another location.[1]

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[1] Different standards of evidence should be used in determining whether the individual meets the refugee definition, according to recent Supreme Court decisions. In asylum

Within these nationalities are also individuals who are unable to demonstrate a well-founded fear of persecution even though their motives for leaving may have been politically generated or their circumstances may be equally life-threatening. Their characteristics, as elaborated by Alexander Aleinikoff of the University of Michigan Law School before the House Immigration Subcommittee are:

> (1) Persons from a country experiencing civil war, a general breakdown of public order, or occupation by a foreign power;
>
> (2) Persons likely to suffer substantial infringement of human rights if returned home, where such treatment cannot be considered persecution based on religious belief, race, nationality or membership in a social group;
>
> (3) Persons in this country who do not choose to apply for asylum . . . because they would like to return to their home countries once conditions change or are fearful that their applications will not be fairly adjudicated here.

For those who cannot demonstrate refugee bonafides, there are few formal mechanisms within the United States or other Western nations for admitting them or providing them protection. Recent court cases have held that there is no obligation to consider asylum for those fleeing situations of civil conflict, widespread violence or anarchy if persecution is not a factor. In cases involving Salvadoran refugees, for example, the Board of Immigration Appeals (BIA) held that the applicants were more akin to 'displaced persons,' having fled the widespread violence in El

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proceedings there is a more generous standard but the government can turn down the request on discretionary grounds. In withholding of deportation, there is a stricter standard but if the applicant meets the definition the government is obligated to ensure that he or she is not returned to the persecuting country.

Salvador, than to 'refugees' within the meaning of the Refugee Act that governs asylum determinations. According to the BIA, "there must be a showing that the claimed persecution is on account of the group's identifying characteristics." Such a determination is difficult for many political migrants, particularly from countries in which civil strife affects large areas. As one recent report on Central America noted:

> Central American refugees (sic) are not individually persecuted for reasons of religion, race or political opinion, in many cases. Generally speaking, the problem is not one of convictions per se, but rather, something much more basic and thus much more tragic: having to save one's life without even knowing why it is endangered.[2]

Faced with the inadequacy of the asylum system for dealing with humanitarian concerns when the migrants are not refugees, the United States has granted safe haven to members of some nationalities, albeit on a discretionary basis. Others have benefitted from "benign neglect," allowed to remain illegally in this country because the government has neither the capacity nor the will to find and deport them. These recurring practices have not amounted to a coherent, consistent policy, however. Instead, the United States has used ad hoc mechanisms, relying on political, ideological and foreign policy factors that may or may not take into account the actual circumstances from which those in need of safe haven have fled.

There has been little opportunity to debate the criteria for granting safe haven or the form that safe haven should take. Such a debate is important today because of the potential controls on immigration that may stem from passage of the Immigration Reform and Control Act (IRCA). Under IRCA it is illegal to hire undocumented aliens. Also, there is increased emphasis on border enforcement. The effects of the law are being felt even before full implementation. For example, newspapers report that undocumented aliens have been fired from their jobs; larger numbers of Salvadorans have been seeking refuge in Canada, fearful of their ability to remain legally or illegally in the United States.

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[2] Edelberto Torres-Rivas, Report on the Condition of Central American Refugees and Migrants, Georgetown University Center for Immigration Policy and Refugee Assistance, July 1985, p. 14.

If the new immigration controls have the intended effect of making it more difficult to be an undocumented alien in the United States, it is well to ask if these effects should fall evenly on all aliens regardless of their motivations for seeking a new home. In passing the Refugee Act, this country already recognized the special circumstances of those who have a well-founded fear of persecution. Now it is time to ask whether there are other categories of people deserving of the protection of U.S. law because they too fled dangerous situations.

The objective of the following pages is to establish a framework for reviewing current practices regarding safe haven in the hopes of contributing to an informed policy debate on this issue. Proposals to modify or restructure the existing mechanisms for safe haven must resolve several complex issues:

- Can safe haven issues be resolved simply by a more equitable and humane administration of current provisions for providing asylum?

- Should safe haven be forthcoming automatically, given certain conditions, or should it continue to be granted on a discretionary basis? If the former, will the Legislative branch, the Executive branch, or both determine the existence of the triggering conditions? If the latter, again, which agency or agencies will have discretion or participate in the decision making process?
- With respect to the criteria on which decisions to provide safe haven should be based, what factors should be taken into account and in what order of priority? Are there circumstances in which safe haven must be granted on humanitarian grounds no matter what the negative foreign policy and immigration impacts?
- Under what circumstances should safe haven be available to all the members of a national entity inside the United States, to certain categories or groups of that nationality, or to individuals on a case by case basis?
- Should the United States contemplate only temporary safe havens for people in emergency or emergent situations? Or, should the purpose of safe haven be to protect people in "refugee like" situations, whether or not conditions in the countries from which they fled are unlikely to change in the short or medium term? If the former, on what grounds and in what ways are safe haven grants to be terminated? If the latter, after what period of time and under what terms may people here for extended periods of time be able to regularize their status?
- What should the "quality" of the safe haven be? The range of possibilities begins with the establishment of closed refugee camps and extends to the availability of full refugee benefits, and the possibility of family reunification. If such benefits are to be extended, should they be available from the start or only after a determined period of time? How should benefits be disbursed?
- What are the advantages and disadvantages of a "benign neglect" policy, by means of which people who are presumed to need a safe haven are not pursued as illegal aliens, but are still classified as illegal aliens for purposes of rights and benefits eligibilities?
- How should conditions in sending countries be determined and monitored?
- What steps should or could be taken to minimize abuses of

a safe haven? e.g. cut-off dates for eligibility to avoid magnet effects? Required forms of registration and reporting?

In the next chapter, we will review the range of U.S. administrative options open to people who may have strong non-economic reasons to fear returning to their countries, but whose reasons do not fall within the refugee definition. While many immigration remedies exist to halt deportation temporarily or permanently, authorities have made use, essentially, of two of them to afford safe haven for people in refugee-like situations: the Attorney General's parole authority and extended voluntary departure (EVD).

Chapter Three reviews the circumstances surrounding recent grants of EVD and examines the policy debates regarding safe haven for Central Americans. This chapter concludes with observations about the adequacy of existing mechanisms in light of past and current practice.

The following chapter contains information about international legal precedents for safe haven, as well as existing practices in Canada and Western Europe. This discussion provides both a context for evaluating current U.S. policies and practices and models for change.

The last section describes the various areas requiring policy changes if there are to be improvements in safe haven responses.

SAFE HAVEN: MECHANISMS AND OPTIONS, PAST AND PRESENT

Although U.S. law does not provide status for, or formally recognize, the category of humanitarian admissions, both individuals and groups in this category may gain admission or avoid deportation by means of administrative mechanisms. The following section will examine a range of such mechanisms, tracing their use, or potential use, for the purposes of providing safe haven. Created for the most part to assist individuals with immigration status problems, they have at times helped select groups of people whose difficulties stem from political problems in their countries of origin. All of the mechanisms described here are discretionary and, while they operate primarily for humanitarian purposes, they have been triggered in most instances by foreign policy and national interest. We divide these mechanisms into three categories:

- those available to persons wishing to enter the United States who are either outside the country or at a port of entry;
- extraordinary administrative actions taken on behalf of individuals who are not eligible or are no longer eligible to remain in the United States; and
- Extended voluntary departure, the only existing mechanism to address the presence of large groups of political exiles who are already in this country.

PERSONS WISHING TO ENTER THE UNITED STATES

There are two principle mechanisms through which political migrants who do not qualify for admission as refugees can be brought to the United States: via the parole authority and via special instructions for visa decisions.

Parole Authority

Prior to 1980, the parole authority was the major vehicle for bringing refugees and other potential migrants to the United States. The parole was first included in the Immigration and Nationality Act (INA) in 1952, to permit the entry of persons not lawfully admitted into the United States. The Attorney General was given authority to "parole" people into the country for "emergent reasons or for reasons deemed strictly in the public interest," presumably for a limited amount of time.

The parole authority was put in place to assist individuals who were inadmissible but whose presence in the U.S. was deemed essential either for humanitarian reasons or for reasons of national interest. It was also intended to assist lawful immigrants or residents who lost documents, needed to travel, etc. Between the 1950s and 1980, however, its primary use was to bring large groups of refugees and persons in refugee-like situations to the United States. All the major groups to be resettled as refugees in the United States--Hungarians, Cubans, Soviets, and Indochinese--arrived under the Attorney General's parole authority. Special legislation enabled the recipients of group paroles designed for refugees to adjust their status and become permanent residents. In legal terms, however, a parole does not constitute a formal admission.

The 1980 Refugee Act removed the Attorney General's discretionary power to admit groups of refugees through the parole authority. Nevertheless, the parole power, or a remedy virtually identical to it, was used one last time immediately following the passage of the Refugee Act, when approximately 125,000 Cubans and 50,000 Haitians were given "entrant" status, after arriving en masse in South Florida.

The Immigration and Naturalization Service presently uses the humanitarian parole in a restricted manner, deemed consistent with the language of the original legislation and with the Refugee Act. INS can issue individual paroles to two categories of aliens otherwise ineligible for entry: The majority admitted are people whose presence in the country is considered to be in the national interest, most commonly witnesses to crimes and persons wanted for prosecution in a crime. (These "beneficiaries," undoubtedly do not see themselves to be the objects of a humanitarian program!) A smaller number of persons are paroled for humanitarian reasons due to "emergent" conditions, most often because of sickness, death and other family emergencies. Approximately 1,000 individuals arrive each year with humanitarian paroles, all of which are limited to the minimum time judged necessary for the purposes of the visit.

Recently INS has issued guidelines for admitting Khmer presently on the Thai-Cambodian border to the United States by means of the parole authority. The measure applies primarily to close family members of U.S. residents. Parolees would not be eligible for refugee assistance. The objective here is to find a

humanitarian solution for individuals who for various reasons cannot be resettled as refugees, yet are in a precarious situation and are close relatives of U.S. residents.
As of this writing, few Khmers have been admitted through the parole authority.

Special Instructions for Visa Decisions

Consular officials in certain countries may be instructed to relax normal criteria in granting visitors' visas. This has come about in a very few instances when the population--or a portion of the population--has been perceived to be temporarily in an unusually difficult or hazardous situation. Consular officials normally refuse to grant a visa if the applicant does not have a seemingly credible reason for the visit, or if the officer thinks it unlikely the visitor will return to the country of origin. However, officials may be instructed to take a "longer term view" of the applicant's intention to return. In other words, the official may issue a visa to a likely overstayer even if the consular official does not believe the visa applicant will return when the visa expires, if it seems likely the latter eventually will return.

Such instructions were issued from the mid-1970's to the early 1980s for Lebanese applicants, with the hope and assumption that the violent conditions in that country, sooner or later, would give way to restored normalcy, and people could return to their jobs and properties. The State Department's Bureau of Humanitarian Affairs asked the Visa Office to instruct consular officers to expedite visas for Lebanese. By the mid-1980s it was apparent that conditions in Lebanon were not going to improve in the short run, and officials could no longer assume that overstayers would return. This being the case, the more lenient visa policy was ended as conditions in Lebanon deteriorated--precisely because the deterioration appeared to be permanent.[1] The Visa Office in Washington issued special instructions regarding certain Iranians, as well, during the hostage crisis period. At that time, the U.S. government ceased to issue normal visitors visas not only to Iranians in Iran but also those who were already out of Iran. This ban on visas affected businessmen, students and tourists, and was seen as a form of punishment to the Khomeini government. However, consular officials were instructed to take humanitarian factors and national interest into account in making visa decisions. The "humanitarian" considerations facilitated the entry of many with political problems who, undoubtedly, later applied for asylum.

Instructions of the kind described above were initiated at a fairly high level in the Department of State, and after wide consultation. No matter where such decisions originate, however, enforcing a policy of greater lenience for visa applicants has proved difficult because of the autonomy accorded to officials in the field. Consular officials are said to be reluctant to modify normal procedures. It sometimes occurs, moreover, that a person holding a valid visa is nonetheless refused admission to the United States, because the Immigration official at the port of entry judges that person to be a poor risk for returning.

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[1] See the testimony of James Wilson, Coordinator of Humanitarian Affairs, in the Senate Judiciary Committee, Subcommittee to Investigate Problems Connected with Refugees and Escapees, April 5, 1976, p. 22-23.

SPECIAL ADMINISTRATIVE ACTIONS FOR INDIVIDUALS WITHIN THE U.S.

Once aliens are in the United States, there are several mechanisms through which they can avoid deportation, including suspension of deportation, Stays of Deportation, and deferred action. In addition, some aliens benefit from "benign neglect," in that the Immigration and Naturalization Service has not made their apprehension a high priority. (Extended voluntary departure, the major mechanism for delaying deportation is discussed in the next section.)

Suspension of Deportation

Suspension of deportation (Section 244 of the INA) allows the Attorney General discretionary power "to suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence." This remedy is reserved for persons who 1) have been physically present in the United States continuously for not less than seven years, 2) are of good moral character, and 3) whose deportation would result in extreme hardship to the alien or an immediate relative who is a U.S. citizen or lawful resident. There has been considerable litigation regarding interpretations of the eligibility requirements, and the discretionary nature of the suspension rulings. While there is no legal bar against it, the "extreme hardship" criteria has not been applied to benefit persons because they face dangerous political situations in their countries of origin. The remedy presently is applied rarely, and only in individual cases.

Stay of Deportation

Federal regulations permit aliens under final orders of deportation to request a stay of deportation (8 CFR 243.4). The District Director has discretionary authority to grant a stay for a temporary period for personal, health, business, family or other reasons. District Directors are not precluded from granting stays of deportation to persons who are afraid to return to their home countries because of unsettled conditions. In fact, District Directors instructed to be sensitive to particular groups, (e.g., the Lebanese in the mid-1970s, because of civil conflict). In a widely publicized move in mid-1986, the INS District Director in Miami temporarily stayed the deportation of eight Nicaraguans because of proposed changes in asylum regulations that might result in a reversal of their asylum denials. This form of relief is also rarely applied. On the average, it is probably employed for less than 1,000 cases per year, and the stays of deportation generally last less than a month.

Deferred Action

There are no published regulations regarding deferred action, also called nonpriority enforcement status, which is a kind of ad hoc stay of deportation. There are Operating

Instructions -- intra-agency guidelines -- under which District Directors may decide that the deportation of certain individuals who have exhausted their appeals is a low priority. Or, the INS officials may assume that the individual or group will depart at some time, but that there are good reasons not to effect the departure immediately. The use of this technique came to public attention when Beatles star John Lennon sued the government for release of the Operating Instructions and other information pertaining to deferred action.[2] Under current Operating Instructions, it is clear that decisions on deferred action will be based on an assessment of INS' workload and resources. Among the factors to be considered in deciding on deferred action are: the likelihood of ultimately removing the alien (for example, age or physical conditions affecting ability to travel, likelihood another country will accept the alien and likelihood that alien will be able to qualify for some form of relief from deportation); presence of sympathetic factors which could lead to unduly protracted departure proceedings; and the likelihood that because of sympathetic factors in the case, a large amount of adverse publicity will be generated which will result in a disproportionate amount of INS time being spent in responding to the publicity or justifying its actions.

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[2] Alexander Aleinikoff and David Martin, Immigration Process and Policy, West Publishing Co., St Paul MN, 1985, pp. 474-476.

"Benign Neglect"

With or without a policy of deferred departure, the Immigration Service may regard a certain nationality or class as low priority for purposes of apprehension, relative to other groups whose deportation it is more actively pursuing. Or, as a matter of policy, the Service may not pursue people in certain categories.

INS tends to concentrate its resources at the border and ports of entry rather than within the interior of the country. The last major effort to deport large numbers of aliens who were already living in the United States was Operation Wetback in 1954-55, in which about one million Mexicans were deported. The project was criticized for its civil rights abuses, since legal residents and even US citizens were removed from the country. Generally, apprehensions within the interior of the United States are now limited to local raids on companies which are noted to employ undocumented aliens. There are few attempts to pursue aliens in schools, churches or other gathering places.

The recent passage of the IRCA is likely to affect the extent to which illegal aliens will continue to benefit from benign neglect. By placing sanctions on employers who knowingly hire undocumented workers, IRCA narrows the employment options and, therefore, ability of these aliens to remain in this country.

EXTENDED VOLUNTARY DEPARTURE

Extended voluntary departure, (EVD) was devised initially as a remedy to benefit people of talent, already present in the United States, whom the U.S. government intended to admit for permanent status. Between 1956 and 1972, non-immigrants physically present in the United States, who could successfully file for third preference visas, were eligible to apply for EVD so that they would not have to leave the country while awaiting their visas. Third preference aliens are professionals, scientists and artists. [Section 203(a)(3)]. This use of EVD for third preference entrants ended in 1972, but District Directors continued to grant EVD for what they determined to be "exceptional cases.[3] EVD thereby became a vehicle for postponing the deportation of individuals when a District Director deemed there to be good reasons not to require departure.

Extended voluntary departure provides a temporary relief from deportation for both individuals and groups of people. As a remedy for groups, EVD generally has been applied to members of national entities physically present in the country pursuant to a determination by State Department officials that conditions in the countries of origin are "unstable" or "unsettled" or to show a pattern of "denial of rights." When members of the designated national groups who are subject to deportation express unwillingness to return to their countries of origin, the deportation is not effected. Often members of these groups file political asylum applications, which if approved, afford them refugee protection. If the asylum applications are denied, however, they may remain in EVD status. It is presently being applied to groups of Ethiopians (who arrived prior to June 30, 1980), Poles, Ugandans, and Afghans. EVD may be considered on a case by case basis, as well, for Lebanese.

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[3] Interpreter Releases Vol. 46, No. 31, August 19, 1969, pp. 198-199; U.S. District Court, Eastern District of Pennsylvania, Parco v. Morris, No. 73-2496, January 1977.

EVD is a hybrid of immigration relief and political response. Formally, the decision to institute an EVD program is made jointly by the State and Justice Departments. The State Department initiates the requests regarding a certain national group. The Department of State also takes the lead in determining when conditions in a country no longer warrant the continuation of EVD status to that country's nationals. The INS implements EVD programs through its office of Detention and Deportation. For their part, the members of the designated national group are not required to come forward and claim their EVD status unless they wish to obtain work authorizations. Although most do make themselves known to INS officials for this reason, it frequently occurs that the EVD candidates make themselves known only when threatened with deportation.

Beneficiaries of EVD are usually able to obtain work authorizations, but are eligible for few benefits. Except under special circumstances, recipients cannot obtain travel documents, nor can they bring their families to the United States. There is no provision that allows individuals with EVD to adjust their status, no matter how long they spend in the United States, unless they meet other criteria.

Of all the remedies presently in the U.S. administrative cornucopia, EVD alone is tailored to provide temporary relief from deportation for persons who, while falling short of meeting an individual "fear of persecution" as defined in the Refugee Act, nonetheless would probably face hardships or hazardous situations in their homelands. EVD, however, is and always has been a discretionary measure. No individuals or groups, have a right to EVD, no matter how dangerous the situations they might face if they are deported to their homelands.

Past State Department requests for the application of EVD have been cast primarily in humanitarian terms related to conditions in the country of origin. Foreign policy issues and immigration impacts may also have been discussed and taken into account, but until recently, only the humanitarian criteria have been cited to justify the grants. At the present time, the nature of the balance between humanitarian criteria and these other factors has become an issue of considerable controversy, in the face of the State Department's continued use of EVD for some groups while it refuses to grant it to Central Americans.

As Table 1 indicates, the Immigration and Naturalization Service lists thirteen national groups as having been granted EVD. In addition, INS considers grants of EVD to Lebanese citizens on a case-by-case basis. The Indochinese and Cuban programs were virtually automatic responses, promulgated along with overseas parole programs; when Cubans and Indochinese groups were paroled into the United States, an equivalent status was granted to their fellow nationals who happened to be in the country already. In the cases still in effect--Ethiopians, Poles, Ugandans and Afghans--and in the Dominican, Chilean and Nicaraguan cases, grants of EVD seem to have been precipitated by specific events or rapidly changed conditions in the countries named: civil war and civil strife, extensive use of repression accompanying a change of government, widespread patterns of violence and political detentions, etc. In the cases of Chile and Nicaragua, EVDs covered periods in which government changes brought both anti-leftists and anti-authoritarians to this country.

The INS had done little to document the operation of EVD. There are no available statistics on how many people from the various countries have actually requested EVD, or how many obtained work authorizations because they were eligible for EVD. Nor is it known how many people applied for political asylum while protected from deportation by EVD, or how many applied when the status was ended. Finally, we do not have a count of how many have returned to their countries of origin once EVD was terminated.

TABLE 1

GRANTS OF EXTENDED VOLUNTARY DEPARTURE

Cuba	1960 to the passage of PL 89-732, providing refugee status to certain cubans
Dominican Republic	October 18, 1966 to April 26, 1978 (For arrivals between April 1965 and June 1966)
Czechoslovakia	August 21, 1968 to December 30, 1977
Chile	April 1971 to December 1977
Cambodia	1975 to passage of PL 95-145, giving refugee status to certain Indochinese
Vietnam	April 1975 to passage of PL 95-145, as above
Laos	July 1975 to passage of PL 95-145, as above
Ethiopia	July 1977 to present, for arrivals prior to June 30, 1980
Uganda	June 1978 to present
Iran	April 1979 to December 1979
Nicaragua	July 1979 to September 1980
Afghanistan	December 1980 to present
Poland	December 1981 to present, for arrivals prior to July 21, 1984

Source: Congressional Research Service, Library of Congress.[4]

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[4] Sharon Stephan "Extended Voluntary Departure and Other Grants of Blanket Relief from Deportation" February, 1985.

Until recently -- when the situation of Central Americans generated concern -- there has also been little interest outside of government in the operation of EVD. With the partial exception of the Ethiopians, past grants of EVD seem to have aroused little controversy. Indeed, attempts to review press coverage of grants of EVD produced very few articles and no public debate. At most, one finds some coverage of the group in question (Ugandans, Poles, Ethiopians, Afghans, etc.) or of conditions in the countries of origin; there is little or nothing about the immigration status of nationals from these countries in the United States. Only in the immigration and refugee "trade journals" (e.g., Interpreter Releases, Refugee Reports) are there references to the Department of Justice announcements, advising the public that the INS has been instructed "not to enforce the departure" of a specific group. Yet, even in this press, there is little information as to the decision-making process that led to any of these grants. In the next chapter, we review the circumstances surrounding recent grants of EVD, as well as detailing the controversey regarding EVD for Central Americans.

EXTENDED VOLUNTARY DEPARTURE

As the primary mechanism through which the United States has provided safe haven, extended voluntary departure merits special attention. The following pages will review the process by which recent EVD grants have been made as well as the apparent reasons that certain groups have been denied it. Examining recent cases, we will focus on questions related to the criteria used in making decisions about EVD and the process by which decisions have been made.

Ethiopians

On May 26, 1977, Patricia Derian, the Coordinator Designate of the Office of Human Rights and Humanitarian Affairs, wrote a long memo to INS Commissioner Leonel J. Castillo about Ethiopians in the United States. She noted that her office had written approval letters regarding a number of Ethiopian asylum applications, but there were many cases in which "the applicant feared return merely because he was an Eritrean, (or) Ethiopian..." Her office felt that

> due to the unsettled conditions in the country following the military take-over in November 1974, that it was unsafe to return such a person to Ethiopia and that, under the circumstances, voluntary departure would be appropriate.

She went on to describe how what appeared to be an improving situation in 1976, had worsened again. The adverse conditions she judged, did not expose the entire population to persecution. However:

> there is dislocation and uprooting of families and persons because of the fighting ..and we recognize that the safety of an individual may be in danger should he be forcibly returned to that country at this time.
>
> We will continue to review each asylum application on its individual merits...In cases where the applicant has not established credible grounds to fear persecution upon return to Ethiopia, we believe that such a person should be placed in voluntary departure status for a period of 12 months, at which time the case should be reviewed to determine whether conditions in Ethiopia have improved enough to permit a safe return.

The INS responded to this communication in July 1977 by ordering its field representatives to refrain from deporting Ethiopians if they expressed unwillingness to return, and to grant work authorizations if requested. Subsequent letters from the Bureau for Human Rights and Humanitarian Affairs (BHRHA) in April 1978 and June 1979 stated that there had been no changes in conditions that would indicate a change in this policy. In July 1980 the Reagan Administration reaffirmed EVD for Ethiopians, noting that it should be applied formally to Eritreans, who in practice had been covered by it. During this period Ethiopians continued to apply for political asylum, which was granted in a number of cases.

In 1981, the Department of State reversed its position regarding Ethiopians in the United States. In an August 8 letter to Acting Commissioner Doris Meissner, Deputy Secretary of State William P. Clark asked that EVD be withdrawn. Although he believed the situation had somewhat "stabilized," neither Mr. Clark's letter--nor an August 2 letter from Judith Hartgen, also of the State Department, elaborating the new policy--disputed that violence and human rights abuses continued in Ethiopia. Indeed, in October 1981, the U.S. representative to the United Nations, Jeanne Kirkpatrick, strongly condemned Ethiopian human rights violations, calling attention to mass murder and arrests.

Paradoxically, one of the reasons given for ending EVD bore directly on the continuing human rights problem: Because the Ethiopian government was in full control of the national territory and Ethiopians were not allowed to leave the country without political clearance from the government, the State Department argued, Ethiopians in danger would no longer find their way to the United States. Without commenting on the likely fate of Ethiopians who had been able to remain in the United States because of EVD, and were about to become deportable aliens, Mr. Clark's August 8 letter contended that Ethiopians who had a well-founded fear of persecution could present their asylum claims to the INS for a case-by-case review. With EVD in effect, he was concerned that

> increasing numbers of Ethiopians are taking advantage of automatic voluntary departure to remain and work indefinitely in the United States without having met the criteria either for immigration or for asylum.

Nevertheless, the State Department reviewed the policy and on June 29, 1982, Secretary of State for Humanitarian Affairs, Elliott Abrams, and Assistant Secretary of State for Africa, Chester Crocker, signed an Action Memorandum suggesting a partial reinstatement of EVD for Ethiopians who had arrived as of the end of 1979. They offered a combination of political and humanitarian reasons for their decision, bearing only indirectly on conditions inside Ethiopia.

> Considerable political pressure has been generated on the Hill and subsequently from the White House in favor of a partial restoration of extended voluntary departure status for Ethiopians in the U.S. The termination as of late 1981--after six years--of blanket voluntary departure' status--has heightened concern about the situation of Ethiopians who might be forced to return home.

In July 1982, the INS announced that it was reinstating EVD for Ethiopians in the country. In internal statements officials within the INS questioned the process used by the State Department to make its decisions about EVD. According to one report, "a decision by State in August 1981 to recommend rescinding the program for Ethiopian Nationals was later privately acknowledged to be based on 'the report of one inexperienced officer' and was revised six months later after much criticism of INS, the Attorney General, and the Administration both in the media and in Congress." [5] Indeed, the withdrawal of EVD for Ethiopians had given rise to protest from a broad range of special interest groups, including the Congressional Black Caucus, political conservatives, legal support groups and human rights organizations. The government moved the allowable date of entry from the end of 1979 to June 30, 1980, and with this date, the EVD has continued to be renewed yearly.

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[5] Immigration and Naturalization Service, "Asylum Adjudication: An Evolving Concept and Responsibility for the Immigration and Naturalization Service," June and December 1982, p.71

Ugandans

On April 7, 1978, the Bureau of Human Rights and Humanitarian Affairs recommended that Ugandans in the United States be permitted to remain and be given authorization to work until such time as they could safely return to their homeland. With much the same line of argument as she made for EVD on behalf of Ethiopians, Patricia Derian, who by then had been named Assistant Secretary of State for Humanitarian Affairs, described conditions in Uganda under Idi Amin's rule, and urged protection for Ugandans who could not establish their eligibility as refugees within the meaning of the UN Convention. The EVD affected a small number of Ugandans, probably under 1,000, who had come to the United States during Idi Amin's regime and, in many cases, had applied for political asylum. When Amin was overthrown in mid-1979, the State Department reviewed the situation, but determined that conditions remained too unsettled to warrant a change in the policy.[6]

In the course of subsequent reviews the State Department sought the views of the U.S. Embassy in Kampala, specifically asking whether Ugandans who had been long-term residents of the United States could safely return. On the basis of the replies, EVD was renewed. In the Ugandan case, the Reagan Administration, like its predecessor, continued to renew the EVD status. Only in

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[6] Letter from Patricia M. Derian to Mr. Hugh Brien, Assistant Commissioner INS Detention and Deportation, June 22, 1979.

September 1986, when both governmental and non-governmental groups reported a substantially improved political situation, did the government decide not to renew EVD for Ugandans. The issue at this point was not simply the likely safety of the individuals facing a return, but whether after so many years in the United States, Ugandan families could be reintegrated socially and culturally in their homelands. Certainly, many Ugandans who arrived in the United States prior to January 1982 will take advantage of the amnesty provisions in the 1986 Immigration Reform and Control Act and will remain in the United States.

Afghans

In an April 12, 1980 letter to David Crossland, Acting Commissioner of the INS, the Deputy Secretary of State, Warren Christopher, described conditions of near-anarchy and insurgency in Afghanistan and the massive exodus of Afghan refugees to Pakistan.

> Available evidence indicates that the widespread violations of human rights--including arbitrary arrest, summary executions, and torture--which have characterized the government of Afghanistan since the April 1978 revolution are continuing...All opposition is being ruthlessly eliminated, and the Soviets are undertaking aggressive operations in an attempt to gain complete control of the countryside.
>
> In such circumstances, we believe that no Afghan nationals currently in the United States except those who have engaged in serious criminal activities--should be forced to return to Afghanistan.

Rejecting the option of qualifying all Afghans as refugees, Mr. Christopher recommended case-by-case determinations of refugee status, combined with EVD for the group as a whole.

This policy has remained in effect. However, some Afghan nationals are ineligible for EVD, specifically those who entered the country illegally with false or no documents and were apprehended at a port of entry. Because these Afghans are in exclusion rather than deportation proceedings, they are not technically eligible for extended voluntary departure. Moreover, if they have lived for some period in India or Pakistan -- where they may have had safe haven -- the Afghans may be denied asylum even if their claim to refugee status is recognized. In such cases, they are granted withholding of deportation, which precludes deportation to Afghanistan because they would be subject to persecution upon their return, but does not preclude deportation to other countries.

The U.S. government has attempted to deport Afghans to countries where it is believed they had first asylum protection--mainly to India or Pakistan. When, as is often the case, neither India nor Pakistan will accept the Afghans, the latter remain in the United States, but without full refugee status. Without refugee status and ineligible for EVD, these individuals (an estimated 200 people), in effect, are paroled into the country--usually after a period of detention. For the most part they have work authorizations, but no other benefits.

Poles

Polish nationals are the only group whose extended voluntary departure was initiated under the present Administration. It was granted at the end of 1981 following the imposition of martial law in Poland in December, and has been renewed at regular intervals since then. The State Department letters to the Attorney General and the INS Commissioner have elaborated the human rights problems facing Poles, citing arrests and general repression of regime critics.

In a June 11, 1982 letter to Commissioner Alan Nelson, Under Secretary of State Lawrence Eagleburger requested that EVD be renewed for a second year. In this letter he called particular attention to possible harassment against Poles returning from the United States, in the context of a worsening situation in Poland.

> A wave of officially inspired anti-Americanism has also swept the Polish media and is evident in recent arrests and detentions of Americans residing in Poland. The anti-American campaign poses a significant danger to those Poles who have been in the United States for an extended period of time and might be forced to return to their homeland ....[There could be] charges that Polish citizens returning from extended stays in this country might try to engage in hostile intelligence or propaganda activities in Poland...

A December 18, 1982 letter from Acting Secretary Kenneth Dam to Attorney General William French Smith again requested a renewal of EVD, but made no mention of the possibly adverse situation facing returning Poles. The Department noted its skepticism that a promised lifting of martial law would really improve the human rights situation, since emergency measures would be imposed instead. Mr. Dam then asked for a continuation of EVD for Poles in the United States because:

> As you know, concern for human rights forms a significant component of overall U.S. policy. In particular, with respect to the situation in Poland, the U.S. and its Allies have taken a number of concerted steps to convey to the Polish authorities the seriousness with which we view their continued denial of rights to the Polish people and our

insistence that these rights be restored...

Six months later, the State Department's next renewal request was devoted entirely to the U.S. foreign policy commitment to put pressure on the Polish government to restore civil and political rights. The letter, written this time by Secretary of State George Shultz to the Attorney General, cast an EVD grant for Poles in the United States in terms of NATO alliance unity:

> At this critical juncture in our policy deliberations with regard to Poland we do not wish to send any signals to the Polish government that would prejudge the outcome of our review or indicate approval of the current human rights situation in that country...All of the NATO Allies continue to observe a policy of not enforcing the departure of Poles who were on their national territories when martial law was declared.

By the next renewal of EVD for Poles, the Administration had found it necessary to give a more explicit explanation of its criteria for granting EVD because of considerable pressure to provide EVD to Central Americans (see next section). In a May 26 memorandum to the Attorney General, accompanying the June 1983 request for an EVD extension, Assistant Secretary of State for Humanitarian Affairs Elliott Abrams reviewed the basis of the EVD request, citing the foreign policy and Alliance considerations that appear in the letter. Turning to the question of El Salvador, he wrote:

> Extended voluntary departure is presently the subject of a law suit against the Department of Justice brought by a group representing Salvadoran nationals who are in the U.S. unlawfully. Plaintiffs argue that there is an objective (humanitarian) standard used by the government when deciding whether to grant extended voluntary departure, that the conditions in El Salvador meet this standard, and that our

> failure to grant extended voluntary departure to Salvadorans in the U.s. discriminates against them unlawfully.
>
> We have argued that humanitarian considerations are but one of a number of factors taken into account in deciding whether to grant extended voluntary departure to an alien class, that foreign policy considerations play a large role, that this should not be subject to judicial review and that our actions in this area are lawful. (emphasis added)

Since then, EVD for Poles who arrived prior to July 21, 1984 has regularly been renewed.

In 1986, Senator Paul Simon of Illinois introduced a bill to regularize the status of Poles in the United States. Despite apparent Administration support, the bill appeared to introduce favoritism on behalf of a single nationality. Many Poles will be able to take advantage of the amnesty provisions of the 1986 Immigration Reform Act, and adjust their status.

SAFE HAVEN AND CENTRAL AMERICANS

For the press and public, the question of safe haven in the United States has been primarily associated with the hitherto failed attempts to protect some half million Salvadorans from being deported back to El Salvador. Support for or opposition to a safe haven in this country for Salvadorans and Guatemalans -- and to an extent, for different reasons, Nicaraguans as well -- are linked with the controversy over this country's role in the Central American conflicts.

The debate over Central Americans in the United States has been in and out of the news since the end of 1981. It has been fueled by continuing challenges to Administration policies both in Congress and in the courts. The issues in dispute include the fairness of political asylum determinations, the practices of immigration officials, and the justifications for denying EVD to Salvadorans.

With respect to safe haven, the debate has involved much more than diverging opinions about the severity of conditions in El Salvador, although assessments of these conditions have been and remain extremely controversial. Opponents of safe haven raise questions about the immigration consequences of granting safe haven to Salvadorans because of their proximity, chronic poverty and previously existing patterns of economic migration.

Congress, the Administration and the Courts on EVD

Congressional interest in the treatment of Salvadorans was mobilized by the legal support groups and voluntary agencies that have defended individual Salvadorans.[7] Special groups -- some of which have been associated with the sanctuary movement -- were created to assist Salvadorans and to generate public sympathy. They worked in the major cities across the Southwest, as well as in cities on the east and west coasts, where large Salvadoran populations were found.[8] As more religious congregations offered sanctuary to Central American the issue of safe haven began to build national interest.

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[7] Among the religious and humanitarian groups at this time alleging discriminatory INS procedures and undue pressure to voluntarily depart Salvadorans were the Lutheran Immigration and Refugee Service, the Church World Service, the American Friends Service Committee, and Amnesty International.

At first, Congress heard testimony but played no role. On December 9, 1981, Congressman Ted Weiss brought a resolution to the House of Representatives requesting that the Secretary of State should recommend to the Attorney General:

> that extended voluntary departure status be granted to aliens who are nationals of El Salvador and grant such status to such aliens until the situation in El Salvador has changed sufficiently to permit their safely residing in that country.

Resolutions 126, a sense of Congress, was unanimously passed in the House, but the Attorney General did not respond.

In the Senate, shortly thereafter, Senator Edward Kennedy, criticized the Administration for its closed door to Salvadorans who did not want to return because of the "violence and spreading conflict." Citing prior grants of EVD and special immigration remedies for other nationalities, under both Republican and Democratic Administrations, he contrasted this past responsiveness to what he characterized as a policy "to deny asylum or temporary safe haven to any Salvadoran."[9] In support of his argument, the Senator read into the Congressional Record an October 16, 1981 _Report on U.S. Treatment of Salvadoran_

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[8] e.g. El Rescate in Los Angeles, Father Moriarty Central American Refugee Program in San Francisco, Carecen in Washington, D.C., Valley Religious Task Force on El Salvador, Phoenix, etc.

[9] In 1981, only two Salvadoran asylum cases were granted.

Refugees, by the UN High Commissioner for Refugees, the findings of which were highly critical of INS treatment of apprehended Salvadorans. In its conclusions, the report expressed concern as to whether the United States was fully in compliance with its responsibilities under the UN protocol.[10]

In 1983 congressional support for extended voluntary departure increased. Congressmen Joseph Moakley and Edward Boland obtained 86 signatures on an April 28 "Dear Colleague" letter to the Secretary of State asking that extended voluntary departure be granted for Salvadorans on grounds of civil strife and widespread destruction. At the beginning of May, the House Foreign Affairs Committee passed another Sense of Congress amendment sponsored by Congressman Weiss asking for extended voluntary departure. It was attached to the State Department's Reauthorization Act of 1983. On May 5, Congressman Conyers sponsored an amendment to the Immigration Reform and Control Act of 1983, again expressing the Sense of Congress in favor of EVD for Salvadorans. Several statements were also recorded in the Senate in favor of safe haven during debates over the Immigration Bill. In May 1983 Senators DeConcini and Durenberger introduced a Sense of the Senate Resolution asking that the State Department recommend EVD for Salvadorans; it was added to authorization legislation for the State Department.

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[10] Congressional Record, Senate, February 11, 1982,S826-S831. The Record also includes the exchanges of letter between Sen. Kennedy, the Secretary of State, the Commissioner of the INS and the Assistant Secretary for Congressional Relations, in which Senator Kennedy requested consideration of EVD for Salvadoran nationals.

Throughout this period, the Department of State opposed EVD for Salvadorans and raised counter arguments to those in the congressional statement and letters. On April 8, 1981 the State Department responded to five questions about U.S. policy toward El Salvador, one of which asked about EVD:[11]

> While civil strife and violence in El Salvador continue at distressing levels, conditions there do not warrant the granting of blanket voluntary departure.... Moreover, Salvadorans now present in the U.S., estimated at 500,000, who were not involved in political or military activities would not, upon their return, be in greater danger than other non-combatants in El Salvador.

On August 19, 1982, Senator Dennis Deconcini received a State Department reply to questions about asylum and EVD, reiterating the State Department contention that "although we deeply sympathize with anyone who wishes to ... enjoy our freedom and prosperity---" a blanket relief was not warranted. This letter noted that the State Department had found human rights improvements in El Salvador. On July 30, 1983 a letter was sent to Congressman Ted Weiss from Secretary of State George Shultz, explaining why the State Department had recommended against EVD for Salvadorans:

> In my advice to the Attorney General I explained why EVD would not be appropriate for Salvadorans at present. I noted that the degree of civil strife varies greatly in different parts of El Salvador, and that in any event the extent of civil unrest alone does not determine the Department's view toward the granting of EVD to nationals of a particular country. (emphasis added)

This letter reflects the State Department's effort to broaden the EVD argument beyond disagreements about how dangerous conditions were in El Salvador. The State Department challenged the statements of supports of EVD that the Administration was bound to respond to humanitarian criteria in making EVD determinations. Instead, it emphasized the importance accorded to immigration and foreign policy criteria in its decisions. A July 19 letter to Congress from Attorney General William French Smith referred to Mr. Shultz' position in more explicit terms:

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[11] Letter to Congressman Michael Barnes.

> Because of the serious foreign and domestic policy ramifications of withholding the expulsion of illegal aliens on nationality-based classifications, grants of such relief have been rare and limited to those cases where, in the judgment of the Senior Executive Branch officials responsible for such policy, the best interests of the United States are served by such extraordinary measures.
>
> In addition to the counsel provided by Secretary Shultz, I have carefully considered a number of other factors. As you know, it is estimated that there are hundreds of thousands of illegal Salvadoran aliens already in the United States... A grant of extended voluntary departure to the Salvadorans undoubtedly would encourage the migration of many more such aliens. Because of the present and potential political and economic instability in other countries in close geographic proximity to the United States, any grants of conditional immigration benefits must be considered in the light of its potential inducement to further influxes of illegal immigrants. Our recent experiences with the mass migrations of Cuban and Haitian nationalities to the United States have underscored the need for proper concern in such matters for the finite capacity of our country's law enforcement and social support systems.

In the aftermath of passage of the Immigration Reform and Control Act, the President of El Salvador joined a long list of supporters of EVD. He requested that the United States grant this status to nationals of his country who were not covered by legalization. Citing the importance of remittances sent by Salvadorans in the United States to relatives in El Salvador, President Duarte stated that EVD would increase the economic stability of the Country, and thereby would benefit the political situation as well. After studying the request, the US government rejected it, stating that granting EVD to Salvadorans would make for bad precedent.

There has been one major attempt to bring the issue of extended voluntary departure into the judicial realm. In 1983, the Hotel and Restaurants Employee Local 25 challenged Attorney General William French Smith for denying EVD to Salvadorans, claiming the denial to be discriminatory.[12] The District Court for the District of Columbia sustained the right of the Union to litigate the case. When the government filed for summary judgment the next year, however, the District Court ruled in its favor.[13] The judge upheld the government's assertion that EVD was not subject to judicial reviews in court, and that the Attorney General had discretion to grant or deny EVD under the Administrative Procedures Act. The Court also agreed that as there were neither laws nor regulations defining the standards on which EVD was granted, the Attorney General could not be held to what the plaintiffs claimed was the standard on previous EVD grants i.e. "widespread fighting, destruction and breakdown of public order."[14] Moreover, the Court argued against a requirement of EVD for any class of aliens "without regard to foreign policy and internal immigration concerns."[15] The case is presently under appeal.

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[12] 563 F.Supp.157 (D.D.C. 1983).

[13] F. Supp.502, 504 (D.D.C. 1984).

[14] *Ibid*. p. 160.

While the role of the courts has been of primary importance in clarifying and modifying asylum practices and procedures, there does not appear to be a similar role for the courts in questions related to safe haven unless the decision cited above is reversed. If Congress does not enact a legislative form of safe haven, or establish firm criteria on which the executive branch must base its decisions, safe haven will probably remain outside the realm of judicial or legislative review.

The Moakley-Deconcini Initiative

In view of the limited congressional and judicial control over EVD, it is not surprising that members of Congress decided to take the legislative initiative to go outside of EVD. Citing their deep concern about human right violations and violence in El Salvador and their dissatisfaction over State Department rejection of EVD for Salvadorans in the United States, Congressman Joseph Moakley and Senator Dennis DeConcini introduced identical bills in 1984 in favor of safe haven for Salvadorans. The bills (HR4447 and S2131) called for a temporary halt to the deportation of Salvadorans already in the United States. The stay was to last three years unless Congress determined to resume deportations sooner. Neither of the bills was enacted prior to the adjournment of Congress. In 1985, the bills were reintroduced (as S377 and HR822). This time Congress asked the General Accounting Office "to investigate and report on conditions of displaced Salvadorans."

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[15] Ibid. p. 508.

Some opponents of Moakley-DeConcini particularly in the Administration, have argued that granting safe haven to Salvadorans would undermine the intent of the Refugee Act since it would accord protection to non-refugees. They also argue against Moakley-DeConcini as they argued against EVD in terms of the undesirable immigration impacts of a safe haven to groups with a previous pattern of economic migration.

In addition, opponents of the present bill voice satisfaction with government claims of human rights improvements in El Salvador. They place much importance on the encouraging results of the Intergovernmental Committee for Migration's (ICM) efforts to follow the situations of a portion of returning Salvadorans. ICM found only a few cases with reported problems among the returnees it was able to track. Finally, some supporters of safe haven for Central Americans resist the specific legislative remedy contained in Moakley-DeConcini, seeing in it a special status that benefits only one nationality.

Support has been built for the Moakley-Deconcini bills both inside and outside of Congress through consensus among supporters on four major issues: First, supporters agreed that the political asylum system has not responded adequately to Salvadoran claims, and further, that the asylum system is not the appropriate recourse for groups of people fleeing general violence as is the case with most Salvadorans.

Second, very few supporters are comfortable with the conflicting assessments of conditions in El Salvador. With State Department and private sector evaluations so much at variance, they welcome the Moakley-Deconcini proposal for an independent and comprehensive study by the General Accounting Office. As the U.S. Catholic Conference states:

> Until such time as the situations in Central American have been studied and evaluated, and we are confident that Salvadorans, Nicaraguans and Guatemalans can return safely, this country is morally obligated to offer them at least temporary haven.[16]

Third, the private agencies and members of Congress who support Moakley-Deconcini essentially discount present State Department assertions that it has always "balanced" humanitarian with other criteria. They contend that the Salvadorans claim to safe haven should be evaluated on the same bases as past grants were said to have been granted, i.e. on the basis of unstable, violent and dangerous conditions in that country. For example, the American Jewish Committee bases its support on the following:

> The bill's sponsors have made it clear that refugee rather than foreign policy considerations provide that rationale for their effort. This is consistent with AJC's long-standing position that refugees should be treated in terms of the danger they face, not as pawns of foreign policy.[17]

And, Church World Service discounts State Department claims that foreign policy has always influenced safe haven decisions:

> Extended voluntary departure has consistently been used in

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[16] Cited in Refugees: Concern and Response, 2 March 1986.

[17] Statement of the AJC, approved by its Board of Governors.

> the past quarter century as a response to situations of instability and civil strife within a country ... It has not been based upon foreign policy considerations or used as a 'foreign policy tool'. It has been granted to nationalities from countries with both friendly and unfriendly governments based on conditions of instability.[18]

Fourth, supporters of Moakely-DeConcini cite the need for congressional involvement in safe haven issues, given the reluctance of the Administration to use its discretion in favor of EVD for Central Americans. Many proponents of Moakely-DeConcini see it as a first step towards the development of policies that would better balance authority of the Congress and Executive regarding safe haven. Noting that the Refugee Act altered the balance between the two branches of government regarding refugee decisions (by eliminating the Attorney General's authority to parole refugees into the United States and substituting a consultation process between the President and Congress), some supporters of Moakely-DeConcini favor similar provisions for safe haven.

Among the supporters of Moakley-DeConcini, religious groups and U.S. refugee voluntary agencies figure particularly prominently. These are the same groups that have been advocating EVD since the early 1980s. As the statements above imply, their public stand on safe haven is based on moral and religious considerations, as well as their experience working with refugees and displaced persons in the United States and abroad. In his

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[18] Statement of Dale de Haan, Director of Immigration and Refugee Services, Church World Service, to the Subcommittee on Immigration, Refugees and International Law, November 7, 1985.

November 1985 testimony before the House Subcommittee, cited above, the Director of Church World Service, Immigration and Refugees Services, Dale DeHaan, noted that Protestant denominations had donated over a million dollars through the Church World Service to support legal, social and other services to Central American refugees. Indeed, the involvement of the religious hierarchies owes a great deal to grass roots advocacy, including congregations participating in the sanctuary movement. It is the actions of clergy and pro-bono legal representatives in communities of the west and southwest where many church supported projects have been established that have spurred religious institutions to oppose Administration policies on this controversial set of issues.

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At present, as this review of the existing and proposed mechanisms to provide safe haven demonstrates, there is little consistency in approach to this issue. Executive discretion has resulted in vastly different responses to individuals whose circumstances -- judged by conditions in their home countries -- are, by the Administration's own statements, essentially the same. Yet, attempts to foster greater balance in safe haven decisions have had little effect to date. The legislative branch, though evidencing concern about current policies, has so far concentrated its efforts on providing relief for specific groups, most notably Central Americans. The Judiciary, pointing to the lack of statutory standards against which decisions on extended voluntary departure can be judged, has declined to intervene.

The United States is by no means the only nation facing the problem of direct arrivals of individuals claiming political motivations for flight. The issue of safe haven has become a North Atlantic issue, with all of the countries of Western Europe and North America reviewing and reassessing their admissions policies. The following chapter discusses the approaches to safe haven taken by other industrialized countries, as a preliminary to a discussion in the last chapter of legislative action needed in this country to develop more consistent standards against which to measure safe haven decisions.

INTERNATIONAL LEGAL BASES FOR PROVIDING SAFE HAVEN

In most nations, safe haven grants are discretionary. Indeed, the granting of asylum has developed entirely within the principle of national sovereignty. International treaties bearing on the rights of refugees and other non-citizens are binding when ratified and incorporated into national law.

Nevertheless, international law, regional accords and an understanding of human rights under customary international law have established the normative context in which domestic immigration and refugee laws have developed and are considered. International and regional agreements are essential as well, in assisting nations to establish consistent measures for dealing with people whose problems cannot be resolved within the legal system of a single nation. This is certainly the situation of people who flee a country because of repression, persecution, or other forms of violence from which their governments cannot or will not protect them. Such people become, in effect, wards of the international community.

Taken together, the dozens of international and regional conventions pertaining to refugees and exiles assure limited protection. Neither the humanitarian nor the refugee conventions adequately address the plight of people who leave their countries because of upheavals, armed conflicts, or generalized violence. If such people are part of large scale influxes, they are all the more vulnerable to expulsion from the countries where they seek refuge. But, precisely because issues related to refugee protection and safe haven require a multinational as well as a national approach, it is essential to understand the potential as well as the limitations of the international system.

INTERNATIONAL INSTRUMENTS

Human rights instruments define the obligations of states to respect the rights of persons within their jurisdictions, but do not specifically oblige them to accept jurisdiction over the citizens of other states. Article 14 of the Universal Declaration of Human Rights, the normative standard setting document of international human rights, grant to "everyone" the "right to seek and to enjoy in other countries asylum from persecution." There is no corresponding state obligation to receive them. The International Covenant on Civil and Political Rights, binding on ratifying states (this does not include the United States), affirms liberty of movement only for persons "lawfully within the territory of a state," and freedom to leave and return to one's own country (Article 12).

In the body of refugee law, the primary protection for people who seek safety in another country, is Article 33 of the United Nations Convention (and Protocol) Relating to the Status of Refugees, which the U.S. has ratified. It requires that states refrain from the _refoulement_ of persons meeting refugee criteria. Article 31 of the Convention further requires that refugees not be penalized for the fact of illegal entries _if_ they have come directly "from a territory where their life or freedom was threatened." The UNHCR regularly exhorts governments to provide adequate opportunities for asylum seekers to establish their refugee identity. But states party to the Convention/Protocol develop their own methods for deciding who is and who is not eligible for refugee protection, and there is no obligatory role for the UNHCR in this process. Nor is the responsibility for the protection of persons who have transited one or more state before requesting asylum clearly defined.

Outside of Africa, states are obliged not to refoule individuals meeting the United Nations Convention, providing, of course, the states have ratified the Convention and/or Protocol. Within the region covered by the Organization of African Unity's Refugee Convention, refugees include

> every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to ...seek refuge in another place outside his country of origin or nationality.

There are few international instruments that apply to the protection needs of mass first asylum entries when entrants are not recognized to be refugees. The most relevant to *de facto* refugees, and the instrument most often cited in defense of Salvadorans in the United States, is the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. It establishes norms for the protection of civilians in time of war. Common Article Three elaborates the protection and assistance to be accorded to the civilian victims of situations of armed conflicts. The Second Protocol Additional ratified by

50 nations (not including the United States) expands on these protections by applying them to the broader categories of armed conflict, excluding only simple "internal disturbances and tensions.[19]

SAFE HAVEN RESPONSES AND THE UNHCR

In large-scale complex movements, people do not necessarily have recourse to the international instruments of refugee protection. In practice, the United Nations High Commissioner for Refugees (UNHCR) has responded to many such large movements in the Third World with protection and assistance programs. The UNHCR has established jurisdiction for such situations, first, by means of _prima facie_ group determinations, and second, by an expanded definition of people of concern to the High Commissioner that includes displaced persons in "refugee-like situations."

The former concept developed in a context of frequent large scale refugee movements during the 1950s and 1960s, mainly in Africa, where the UNHCR was unable, practically, to screen all members of a group to determine whether they met the refugee criteria. Therefore, the High Commissioner adopted the technique of defining the group as a whole as _prima facie_ refugees. Since the 1960s, the _prima facie_ classification has been used in many parts of the world, wherever there have been large scale displacements. The premise of the group determination is that unless there is evidence to the contrary, all members of the group may be considered prima facie refugees. The UNHCR Handbook on Procedures provides:

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[19] See the lengthy discussion of international humanitarian law in Deborah Perluss and Joan F. Hartman "Temporary Refuge: Emergence of a Customary Norm," _Virginia Journal of International Law_, Spring 1986, pp. 551 - 626.

> While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to the so called 'group determination' of refugee status, whereby each member of the group is regarded prima facie...as a refugee.[20]

Since the 1960s, United Nations resolutions have also permitted the UNHCR to expand its protection and assistance mandate to cover persons considered to be "displaced persons in refugee-like situations." These are people who do not have a "well-founded fear of persecution" as defined in the Convention/Protocol, but who have had to leave their countries, and cannot return to them because of the still prevailing conditions there.[21] The authority and ability of the UNHCR to assist and protect persons in these categories, obviously, is contingent on the willingness of governments to admit them in the first place. The mandate of the UNHCR is entirely non-binding in so far as either sending or receiving governments are concerned.

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[20] Handbook on Procedures and criteria for determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. Geneva, September, 1979, parag. 44.

[21] Michel Moussalli, "Who is a Refugee?" Refugees Magazine, September, 1982, p. 42.

The underlying principle for the UNHCR is that "In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge."[22] In 1981, a Group of Experts on Temporary Refuge in Situations of Large Scale Influx convened to examine this issue. The general conclusions of this Group of Experts were subsequently endorsed by the 32nd Session of the UNHCR Executive Committee, in October 1981. At this session, the Committee adopted the following conclusions:

> 1. In situations of large-scale influx, asylum-seekers should be admitted to the State in which they first seek refugee and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection...
>
> 2. In all cases the fundamental principle of *non-refoulement*--including non-rejection at the frontier--must be scrupulously observed.[23]

The largest movements of refugees and people in refugee-like situations continue to occur among third world countries in the same region, but increasing numbers of people from third world regions now move to the more developed industrialized countries of Europe and North America. The governments of these countries, especially the United States, have buttressed UNHCR exhortations to Third World governments to accept first asylum entries. There are no comparable or effective pressures on the industrialized country governments to do the same.

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[22] 1979 Executive Committee, 30th Session.

[23] UN Doc. A/AC.96/601 parag. 57(2)II, A. See Guy Goodwin Gil *The Refugee in International Law* Oxford, Clarendon Press 1985. pp. 118-119.

THE SAFE HAVEN ISSUE IN INDUSTRIALIZED COUNTRIES

> Amongst the spontaneous arrivals of refugee and asylum-seekers...there are therefore a large number of persons from developing countries for whom, for various reasons it has not been possible to provide adequate durable solutions within the regions from which they originate. In comparison with the very large numbers of asylum-seekers accommodated in countries in their regions of origin, the numbers of such arrivals in countries of Europe are significantly lower. It is, nevertheless appreciated that the problems Governments faced with arrivals of asylum-seekers within their territories cannot be measured solely in numerical terms. Such arrivals can and do pose particular problems for countries where asylum-seekers are treated on an individual basis and entitled to significant socio-economic benefits, if recognized as refugees, they are generally accepted for integration leading to eventual naturalization.[24]

In the past few years, the UNHCR has devoted increasing attention to the issue of large scale influxes into industrialized countries. It has approached this problem by urging that all governments, whether in industrialized or developing countries, adopt humanitarian responses. In his opening statement to the Executive Committee in 1986, the new High Commissioner, Jean Paul Hocke', commented that it was no longer sufficient for industrialized countries to make refugee assistance available to developing countries. "The industrialized countries must also share the burden of accepting those ...who seek asylum outside their regions..." Further, implicitly criticizing some of the efforts in the industrialized countries to impede illegal entries, the High Commissioner urged governments not to take measures that would affect adversely genuine refugees in the course of controlling illegal economic migrants.

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[24] UN General Assembly, Executive Committee of the High Commissioner's Programme, 36th Session, A/AC.96/INF.174, 4 July 1985. parag. 13.

> Refugees and asylum seekers who are the concern of my office should not be the victims of measures taken by Governments against illegal immigration or threats to their national security, however justifiable these may be in themselves.[25]

Additionally, with respect to large scale influxes to industrialized countries, the UNHCR annual reports and Executive Committee Notes on Protection express concern about possibly exaggerated allegations of "abusive asylum requests" and "manifestly unfounded asylum applications." They also note with concern the detention of asylum seekers and the growing phenomenon of "refugees in orbit."[26] The refugees in orbit problem occurs when the state in which a person requests asylum refuses to accept jurisdiction for the asylum applicant on the grounds that the latter should have applied in another country through which he or she previously transited.

The two issues--manifestly unfounded asylum claims and refugees in orbit--have been linked to what the UNHCR and industrialized country governments, (mainly in Europe), have characterized as "irregular movements of asylum seekers." The term "irregular movements" is used because the people in these influxes have moved away from countries where, presumably, they may have found safe haven, and have entered the industrialized countries without permission or proper documentation. When they do so, they are accused of having disrupted the regular channels of refugee protection and assistance.[27] Some of the industrialized countries agree that they need not do case-by-case evaluations of refugee claims and/or provide safe haven to the new arrivals the aliens had--or might have had--safe haven in immediately adjacent countries. Recognizing that some of the migrants cannot return safely to their home countries, the industrial nations seek other alternatives, sometimes return to the country of first asylum.

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[25] Opening Statement by the High Commissioner for Refugees to the thirty-seventh session of the Executive Committee of the High Commissioner's Programme, October 6, 1986.

[26] See Ibid. 33rd Session, A/AC.96/613, 12 October, 1982, parag 28-33; and Ibid A/AC.96/660, 23 July 1985.

In a comprehensive analysis of the "irregular movements" question, UNHCR consultant Gilbert Jaeger seriously questioned the premise that the large scale influxes into the industrialized countries should be considered "irregular". He found that the component of genuinely abusive asylum applicants was small, and noted that the movements themselves were in large part:

> The consequences of deficient legal, economic and social conditions in countries adjacent to the countries of origin of refugees, chiefly developing countries, as well as in some industrialized countries of arrival.[28]

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[27] See Ibid, July, 1985 and A/Ac.96/671, 9 Oct. 1985, "Report of the Sub-Committee of the Whole on International Protection," Parag. 59-70.

[28] Study of Irregular Movements of Asylum Seekers and Refugees July, 1985.

Safe Haven Responses in Western Europe and Canada

From the beginning of the twentieth century, civil and religious strife, regional upheavals, war and repression have driven European refugee movements back and forth across the continent. Much more than the United States (or Canada), Europeans are accustomed to providing refuge for first asylum political exiles. However in Western Europe and Canada, as in the United States, treatment of the newly arriving would-be refugees is controversial. The safe haven policies and practices developed in other industrialized countries originate and have evolved in a different historical context, and reflect a different set of expectations than those of the United States.

Since the 1950s, the dominant movement of refugees to Europe has been from Eastern European. Not only have Eastern Europeans almost always been able to remain in Western European countries of first asylum, but those whose refugee credentials have not been recognized in the country of first asylum, nonetheless, may be eligible for resettlement in the United States, Canada, Australia or New Zealand. Among the Eastern Europeans there are numerous cases--perhaps a preponderance of cases--of persons who were not targets of particular persecution at the moment they left their countries. However, they risk arrest and other penalties by virtue of having left without documents, or having abused the terms of their exit permits. (This is called "Republikflucht"). People in this situation, more often than not, are given a status other than that of Convention refugee, based on humanitarian reasons.

In the past two decades, the movement from east to west that began in the 1950s coincided with a large scale immigrant movement essentially from south to north. So-called "guest workers" were brought from Southern Europe, as well as from Turkey and Greece, and in the French case, from North Africa. Few "guest workers" were imported into Western Europe after the oil-induced recession of 1973. But, would-be workers continued to arrive and those already in place often resisted returning home.

Among the Turks, one of the largest groups of guest workers, many refused to return when their work contracts expired in the late 1970's. The Turkish government's human rights record had deteriorated seriously during that period. In addition to the guest workers who expressed fear of persecution if they returned, other Turks arrived, claiming to be victims of repression rather than guest workers. Western European governments have acknowledged that claims from Turkish Christians (Assyrians) and from Kurds might be valid, but usually view other Turkish claims unsympathetically.

During the same period, other national groups from the Middle East, South Asia and Africa also arrived in substantial numbers, likewise citing repression in their countries of origin: Iranians, Lebanese, Ethiopians, and smaller numbers of Afghans, Ghanaians, Kurds, Zairians, Pakistanis, and Latin Americans joined the Eastern European asylum seekers during the 1980s. These groups, still arriving at this writing, undoubtedly include a large portion of economic migrants, but by no means are their asylum claims necessarily abusive. At the present time, the single most numerous and controversial group in the European asylum pool are the Tamils from Sri Lanka. The Tamils pose a dilemma for their European hosts. While the latter are unhappy about the number of entries, they also recognize the Tamils' reasons for flight, more often than not, to be compelling.

Western Europeans complain about the first asylum entries from Third World countries on grounds of large numbers and perceived problems of integration. Individually, nearly all the governments (save Denmark) have imposed visa restrictions on the nationals of countries from which there are large immigrant or refugee migrations. The German, Dutch and Scandinavian governments have negotiated with the German Democratic Republic to convince the latter to adopt measures that will prevent its territory from being used as a transit for illegal entry into the West. Collectively, the governments have attempted to develop a common framework for handling first asylum entries both through the UNHCR and the Council of Europe. At the same time, they seek means to "regionalize" the protection of Third World asylum seekers, (i.e. to expand refugee protection in regions outside of Western Europe) so that few will arrive.

The Council of Europe has drafted measures bearing on the problem of refugee flows to industrialized countries. Pertinent among these is a 1982 Report of the Council's Committee on Migration, Refugees and Demography that urged member governments to "fight recent developments in several countries tending to assimilate the situation of the refugee with that of the ordinary alien or migrant worker and to apply refugee criteria too strictly."[29]

In recent years, the Council of Europe, through its Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum (CAHAR), has devoted considerable attention to resolving the problem of refugees in orbit. CAHAR's mandate includes efforts to harmonize asylum eligibility procedures and this, in turn, has led that body to look critically at the issue of where jurisdiction lies for making asylum determinations. The United Nations Convention prohibits refoulement, but it does not preclude returning refugees or asylum seekers to countries where they presumably would not face persecution. Therefore, governments increasingly have tried to send asylum seekers in their territories to the places presumed to be the countries of first asylum. CAHAR, whose deliberations are private, has sent to the Council of Europe's Committee of Ministers, a draft resolution that puts forth, among other things, standards for determining the "country of first asylum." No agreement as yet has been reached.[30] The practice of sending asylum seekers from one country to another obviously has a negative effect on the possibility of finding safe haven protection.

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[29] "Report in Reply to the 23rd Report on the Activities of the UNHCR," Council of Europe Document No. 4947 (7 September, 1982).

The Europeans created mechanisms both for asylum determinations and for "safe haven", for the most part, prior to the large scale entries of the late 1970s and 1980s. The latter were intended to provide humanitarian relief from deportation for non-refugees of national concern. Both were intended to benefit fellow Europeans, but at the present time these mechanisms serve a much wider range of persons from all parts of the world.

Unlike the administrative safe haven mechanisms in the United States, those in Europe almost all carry the possibility of eventual adjustment of status and integration. While the United Kingdom designates national groups for safe haven protection in a similar fashion to the U.S. extended voluntary departure, safe haven is determined in most West European countries and, more recently, Canada on a case-by-case basis.

For purposes of comparison, it is useful to review the range of humanitarian options in Canada and Western Europe for de facto refugees and persons otherwise of humanitarian interest. In the following section we will briefly describe the safe haven mechanisms and humanitarian remedies in a few selected countries. We will then comment on the effectiveness of these remedies, and review some of the concerns regarding their implementation.

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[30] The information for the "refugees in orbit" question has been drawn in large part from an unpublished study prepared for the Refugee Policy Group by Clare Pastore of the Yale Law School, Lowenstein Human Rights Law Project, in 1986.

Canada

Canada remains one of the few industrialized countries that still encourages immigration. The Canadian Immigration Act of 1976, Section 3 pledges that immigration policy will recognize the need "to fulfill Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted." In its refugee admissions and asylum programs, Canada accepts ("lands") Convention refugees, and has also initiated "Special Programmes" for the nationals of countries "experiencing adverse domestic events."[31] There are special programs for all (or certain categories) of nationals from Afghanistan, El Salvador, Guatemala, Iran, Iraq, Lebanon, and Sri Lanka; (until recently, the list included Chile, Ethiopia and Poland as well). The special programs permit immigration to Canada under relaxed criteria or, more often, protect members of the group from deportation after they have arrived. In addition to the special programs, there have been longstanding "no return" policies in effect for asylum applicants who are nationals of Albania, Bulgaria, Cuba, Czechoslovakia, Cambodia, North Korea, the GDR, Laos, the Peoples' Republic of China, Romanian, the USSR, and Vietnam. In 1987, the Canadian government lifted blanket national designations regarding "no return," having received large numbers of Salvadoran aliens who feared the effects of the passage of the U.S. Immigration Reform and Control Act. At present, individuals must apply for permission to remain in Canada.

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[31] Ministry of Employment and Emigration, Immigration Manual chapter 26.

A Special Review Committee (SRC) receives the applications of refused refugee claimants and other persons who claim they would experience difficulties in returning to their countries of origin. The SRC may recommend that due to special humanitarian circumstances a person who is otherwise deportable be allowed to remain in Canada. SRC guidelines call for consideration to persons in a variety of situations, including those whose return would be "inhumane...because of severe oppression", to persons who would suffer "punishment of inordinate severity" for overstaying their visas, and persons "who articulate a need to live in a democratic system and are prepared to sacrifice for this." In practice, individuals who are not from countries for which there are special programs do not often benefit from these provisions.

While the list of countries for which there are special programs is quite extensive, the Canadian government, at the same time, has imposed visa restrictions on the would-be entrants from these countries. The Canadian officials have done so in the hope that persons seeking to be refugees in Canada would make themselves known to Canadian consulates in their countries of origin or in another country outside of Canada.

The Netherlands

An alien who applies for political asylum to the Minister of Justice in the Netherlands, may be advised that although he or she has not been admitted as a refugee,

> you are permitted to stay in the country on humanitarian grounds because of the political situation in your country of origin, to which you could not reasonably be expected to return.[32]

This person has become a "B" status refugee, i.e. a person entitled to asylum as a *de facto* refugee. The status is applied not only to person who flee generalized danger, but also for applicants who are unable to produce sufficient evidence of a well-founded fear of persecution. Class B refugees receive residence permits, which must be renewed annually by the Aliens Department of the Ministry of Justice. In effect, they are entitled to all the benefits of full refugee status, except that they cannot formally claim refugee protection under the UNHCR. In practice, they are not deported. This status was used in the Netherlands in 1979 to handle the case of a group of Portuguese draft resisters who asked for Dutch asylum. Although draft resisters usually are not eligible for Convention refugee status, the Dutch Government wanted to protect this group. It is also the status given to many Eastern Europeans who did not leave because of a fear of persecution but would be subject to severe penalities if they returned.

The Dutch government has been reluctant to grant refugee status--or even *de facto*, class B status--to the growing number of Tamils in the Netherlands, although many Tamils allege specific persecution on political grounds. But, because the government acknowledges that conditions in many parts of Sri Lanka are dangerous and disrupted by conflict, and because of public support in Holland for the Tamils, the government has largely ceased trying to deport them. Therefore, Tamils who apply for asylum often receive a residence permit, based on humanitarian considerations. This is referred to as a "class-C" status, and it permits them to remain in Holland, to work and to obtain many benefits. Tamils in this situation are subject to deportation if another country can be found to accept them, or if it is established that conditions in Sri Lanka have substantially improved, neither of which seems likely in the short run.

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[32] Ministry of Justice, Aliens Affairs Department, *Asylum (Asiel)*, October 1983, p. 13.

Switzerland

According to Swiss officials, their nation has the highest ratio of asylum-seekers to inhabitants in Europe.[33] Switzerland recently tightened its asylum proceedings, with the changes bringing formal regulations more in line with actual practice.

Unlike the Netherlands (also, Sweden, Denmark), there is no "class B" status. Nor are there other legal provisions for extending asylum to persons who do not meet refugee criteria. Nevertheless, it is possible for an individual whose asylum application has been rejected to obtain a residence permit on humanitarian grounds. The Swiss government has taken the positions that certain groups should not be returned, e.g. Rumanians, Soviets, Iranians seeking to avoid military service, and sometimes Lebanese.

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[33] *Refugees Magazine*, June, 1985, pp. 16-18. The article goes on to note that the percentage of foreigners in Switzerland has always been very high, and that at other times, Switzerland has coped with much larger numbers of refugees as well.

Both individual cantons and the federal government may grant safe haven in the form of an "internment," a term which in Switzerland does not connote incarceration. The internment, now called a "provisional admission" under the new law, was created primarily as a response to the "republikflucht" phenomenon. This refers to the situation of persons who, at the time they left their countries, did not meet the Convention refugee definition, but because of having left illegally would face some form of persecution on return. The internment/provisional admission permits a person to work, but does not allow family reunification. Likewise, at the Cantonal level, but subject to federal approval, an individual may be given a residence permit for humanitarian reasons. The Cantons may, but rarely do, use a limited number of work authorizations at their disposal to allow aliens to remain. Humanitarian residence permits are all subject to review, and may be revoked if the situations that gave rise to them are seen to have changed. In the case of either cantonal or federal safe haven, however, an individual is eligible for permanent residence at the end of five years, and may seek naturalization after twelve years.

The largest group, and as in Holland the most controversial, are the Tamils. Information gathered by Swiss private and public sector investigatory missions to Sri Lanka have largely supported contentions that Tamils should not be forcibly returned. However, very few Tamils have received any form of safe haven or asylum. In practice, with regard to Tamils as well as other groups, formal safe haven mechanisms have not been used often in Switzerland. It is much more common for individuals to have remained in the asylum backlog until they have been in the country long enough to apply for a permanent residence. Swiss authorities thus far have been reluctant to deport people who have resided in a Swiss Canton for five years continual residence or more.

Germany

All aliens must register upon entry into Germany. The German Constitution assures residence permission to every foreigner who, upon registration, applies for political asylum. Having applied, aliens are assigned to specific locations, pending the outcome of their applications. (Eastern Europeans do not necessarily have to reside in assigned locations.) Most are obliged to live in special residences as well where, in effect, they are detained. By a 1966 ministerial decree, asylum seekers from Eastern Europe, excluding Yugoslavia, are not to be returned if they left their home countries without permission, even if their asylum applications have been rejected. They may obtain residence permits and work authorizations after one year, but do not receive refugee benefits. Non-Eastern European rejected asylum applicants may receive "duldung" (toleration) permits that allow them to reside in Germany and to work, after a period of two years, in jobs for which Germans are unavailable. In addition to the Eastern Europeans, Germany also has a no return policy at the present time for Afghans, Ethiopians, Iranians, Palestinians from Lebanon, and Christian Turks.[34]

The tolerated and *de facto* refugees outnumber by far the quota refugees and successful asylum applicants. There are estimated to be more than 200,000 Poles alone. When asylum is approved it is customary for German authorities to grant it only to the individual applicant, excluding his or her family. The latter are given residence permits, as are the families of other immigrants. These carry few benefits other than eventual permission to work. Although asylum applicants from countries with pervasive human rights abuses or high levels of violence are usually able to obtain at least a *duldung*, it is sometimes issued for a period of only a few weeks at a time, subject to continuing renewals. Particularly in the case of Tamils, there is considerable pressure on them to voluntarily repatriate.

Spain

Having signed the UN Refugee Convention in 1978, Spain enacted its first comprehensive refugee and asylum law only in 1985. The Spanish government, for historical reasons, was supportive of strong legislation in favor of refugees, and the UNHCR played a major role in drafting the law. The Law on the Grant of Asylum and the Recognition of Refugees established procedures for determining asylum and accepting refugees; it was soon supplemented by another Law, on the Rights and Liberties of Aliens, providing additional options for the protection of persons in refugee-like situations. While there remain serious problems in the implementation of Spain's laws pertaining to asylum, the legislation itself represents a broad and generous approach both to political asylum and safe haven.

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[34] Paragraph 14 of the Aliens Law provides against the expulsion of persons who might in fact be in danger or loss of liberty in their countries of origin, even if not for specifically political reasons.

There are two separate decisions for refugee status and for political asylum, although in practice, applicants may apply for both at the same time. Refugee status is reserved for persons meeting Convention definition standards, and obliges the state to refrain from *refoulement* to the country of origin. Refugee status, in and of itself, does not entitle the individual to residence in Spain, protection of the Spanish government, or to the refugee benefits which are available to persons who obtain political asylum. In most cases persons recognized as refugees who choose to remain in Spain apply successfully for political asylum, and receive these benefits.[35]

Unlike refugee status political asylum in Spain is *not* limited to persons meeting the Convention refugee definition.

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[35] Recognized refugees often will not apply for political asylum if they hope to be resettled in a third country. If resettlement is not forthcoming, or if they apply for asylum and are rejected, they may subsequently apply for a residence permit under the Aliens Law.

The asylum grant, which is discretionary, can be made to Convention refugees as well as:

> Persons persecuted, prosecuted or condemned for any of the following reasons:
> -- for political crimes or for acts connected with these,
> -- for acts carried out in the exercise of a fundamental right recognized by the Spanish Constitution,
> -- for reasons of race, membership of an ethnic group, religion, membership of a particular social group or political opinions or activities, even if the persecution, prosecution or condemnation would apparently be motivated by a common crime,
> -- for crimes committed with the intention of obtaining recognition for fundamental rights and freedoms protected by the Spanish law, or with the intention of fighting against non-democratic systems.
>
> Persons not included in any of the above categories, but who are nonetheless considered worthy of receiving asylum for humanitarian reasons.[36]

These asylum provisions are broad, and the possibility of an asylum grant on humanitarian grounds is an important form of safe haven protection. In practice, however, Spanish authorities have granted political asylum for humanitarian reasons in few cases, and have often rejected applicants in the broader, non-Convention categories of the asylum law. The most common practice is for the Interministerial Commission that reviews asylum applications to find that the applicant does not meet Convention criteria, but to recommend that the person be allowed to remain in the country as an alien. This has occurred in the cases of Lebanese, Palestinians from Lebanon, Tamils, Iranians, Iraqis, and Salvadorans, all representing groups whose lives or freedoms are judged to be jeopardized by war and civil conflict.

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[36] The English translation was made by the UNHCR branch office in Madrid.

Possessing only a residence permit, however, they rarely obtain work permits, and have difficulties finding work if they have permits.

SAFE HAVEN COMPARISONS

While refugee procedures and safe haven responses differ, there seem to be two general, somewhat contradictory tendencies in these responses among the countries of Western Europe and Canada. First, these countries try, to the extent possible, to minimize large scale entries of asylum seekers from the Third World by imposing visa restrictions and policing of borders and international airports. Second, the industrialized countries of Western Europe and Canada allow those individuals and groups already in the country to remain if it is believed they would face probable danger in their countries of origin but the governments do not necessarily give the aliens formal status.

This said, pressures are growing throughout the region to deport a larger portion of the entrants who claim to be asylum seekers. While authorities insist that they do not deport people to places where they face danger, evidence indicates that more people are being returned to their countries of origin, especially if they have entered with false documents. At the present time, people acknowledged to be refugees are also frequently deported on grounds that they had first asylum somewhere else. There have been public protests against deportations--especially of Tamils--in a number of countries. In

Switzerland where, in addition to Tamils, small groups of Zairians, Chileans and Turks have also been expelled, some citizens have begun a Sanctuary movement in protest.

European governments remain committed to a policy of offering safe haven to Eastern Europeans. With regard to other national entities, European immigration officials, like their U.S. counterparts, wish to "protect" their borders from illegal entries, regardless of the motives of the people who seek entry.

Once people have entered and have initiated the asylum process, the Europeans (with the exception of the United Kingdom) and more recently Canadians differ somewhat from the United States in their approach to the question of safe haven. In the former, officials undertake individual status determinations rather than give blanket designations to all members of a national group. In the United States, in contrast, asylum seekers are tested individually but EVD, the major form of safe haven, is generally given to all members of a national group.

In both situations, the results can be the same, however. Individual determinations can take long periods of time, particularly when there are large numbers seeking some relief from deportation. The longer people spend in the adopted country, the stronger the humanitarian objections to obliging them to depart. In Europe, however, there is greater likelihood that those receiving safe haven will be able to legalize their status. At first, people may be provided a humanitarian safe haven on political grounds; subsequently, the time spent in the country becomes the humanitarian factor assuring them continued safe haven and eventual immigrant status. In the United States, they may remain indefinitely in illegal status (although some may now benefit from legalization provisions in IRCA).

The different European-U.S. perspectives are illustrated by detention practices on the two sides of the Atlantic. In both situations, alien detention is perceived as a mechanism to control or deter illegal entry. Yet conditions in detention differ in large part because the European countries assume that asylum seekers are likely to obtain some legal standing whereas U.S. policy assumes continuation of illegal status. While physical conditions in U.S. facilities may surpass those of facilities in Europe, detainees in the former usually do not have access to language training or education, and are not free to move about. Aliens in Germany and sometimes Switzerland are obliged to live in government operated reception centers, where conditions often are quite poor. However, residents may come and go freely. They are given access to, and sometimes are obliged to take advantage of language training and education. Officials provide these services, they claim, because they know that even rejected asylum applicants may eventually become eligible to legalize their status.

A major difference between the U.S. and Europe--or Canada--is the immigration context in which policies about safe haven are made. The fact that it is relatively easy to reside in the United States without ever making oneself known to immigration officials increases reluctance of the latter to implement safe haven policies. In most of Europe and in Canada, (with the possible exception of France), registration procedures operate fairly effectively. Very few people live in these countries anonymously. Even in Spain and Italy, where thousands of aliens live without a formal residence status, they usually have made themselves known to immigration officials at some point. Authorities in the United States candidly acknowledge that they cannot accurately estimate how many people are illegally residing in the United States, much less how many of these may be considered to have come for politically related reasons. The immigration amnesty approved by Congress in October 1986 will be helpful in this regard but the number of undocumented aliens in the United States will remain controversial. With employer sanctions, however, the United States may join its industrial neighbors in having greater control over who enters and works in this country.

ISSUES AND CONCERNS REGARDING U.S. SAFE HAVEN PRACTICES

The United States has had a recurrent practice of granting safe haven, on a discretionary basis, to individuals fleeing from life-threatening situations. This practice has not, however, amounted to a coherent consistent policy. Instead safe haven decisions have been ad hoc, politicized and, even, capricious. The United States has not taken seriously its role as a country of first asylum, despite the presence of thousands of people claiming to be political exiles. Therefore, this country has not developed public policies regarding major issues, such as the criteria for granting safe haven; the extent to which it should be offered as blanket relief to all members of a nationality or should be based on individual criteria; mechanisms to deal with the immigration ramifications of safe haven decisions; the locus of responsibility for making decisions; the benefits to be accrued recipients of safe haven; the relationship between U.S. refugee policies and safe haven; or the international and regional ramifications of U.S. decisions on safe haven.

LEGISLATIVE VERSUS ADMINISTRATIVE REMEDIES

We have concluded that there is need for a mechanism recognized in statute, separate from asylum and withholding of deportation, through which individuals and groups who do not meet the refugee definition can receive permission to remain in the United States because conditions in their home country will not allow safe return. The existing administrative remedies are insufficient. And, at present, there is only one clear statutory basis for granting temporary or permanent relief from deportation on humanitarian grounds -- if the alien meets the refugee definition. Yet, the refugee definition -- well-founded fear of persecution on the basis of race, religion, nationality, membership in a social group or political opinion -- does not cover the range of humanitarian circumstances from which political exiles may need temporary protection. Nor does it cover the range of individuals to whom the United States may wish to provide temporary or permanent status.

The reasons for leaving one's home country or being afraid to return are far more complex than those covered in the refugee definition. Many migrants who do not have a well-founded fear of persecution nevertheless have a well-founded fear of injury, deprivation of human rights, and even death. They have left situations of civil war, civil strife, and repression where there is a good likelihood that they could be the victim of random or organized violence. The United States has traditionally shown compassion for such individuals, and it is likely that this nation will be called upon to offer refuge in future humanitarian emergencies. Having a statutory basis through which safe haven can be granted will provide an orderly process through which the United States can respond, as needed, to what we know are recurrent phenomena.

Seeking a legislative remedy is not without its own dangers, however. During the course of our interviews for this project, we heard repeatedly expressions of concern that Congress would not be sympathetic to safe haven legislation. There may, in fact, be resistence to extending the categories of people who can gain entry to the United States, even if there are humanitarian grounds for doing so. Opening the debate on U.S. refugee and asylum policy could prove counterproductive, leading to undesirable restrictions rather than increased flexibility to deal with humanitarian emergencies.

A second concern about a more formal category of safe haven pertains to its relationship to asylum. In several European countries with statuses that fall short of full refugee recognition, there is a tendency to grant to applicants this lesser status rather than asylum. Asylees are often given permanent status and may eventually naturalize, whereas the safe haven statuses do not allow for permanent residence. Thus, the availability of a safe haven status may create a population that is in limbo for long periods and, in effect, is in a second class situation.

The absence of a safe haven status can also have negative repercussions on asylum, however. Some asylum applicants know that they do not have strong asylum claims, but there are few other ways to contest deportation to such countries as El Salvador. In such cases, the asylum application is itself a form of safe haven since individuals will not be deported until they exhaust all appeals. As a result, the asylum system is overloaded with cases that are not likely to succeed on their merits. Immigration officials, seeing the large number of unmeritorious claims, then tend to view the asylum system as fraught with abuses. Recognizing that some applicants have good grounds for wishing to remain in the United States, given the conditions in their home countries, some immigration officials spoke to the need for a second status that they could use to provide temporary relief.

We have come to the conclusion that the advantages of a more orderly process for granting safe haven outweigh the disadvantages of seeking more regular mechanisms. Without a statutory basis for granting safe haven, decisions are likely to continue to be made on purely discretionary bases. As several government officials told us, in the absence of a firm legislative and regulatory base, mid-level staff will continue to make difficult decisions without having adequate standards or guidelines. Or decisions will be politicized, with short-term foreign policy and immigration ramifications receiving greater attention than humanitarian factors. Moreover, the courts will still be unable to review decisions to ensure that they meet agreed upon standards.

While we recommend legislation because of concerns about abuses of discretion, we recognize that in any legislation developed, there is need to balance executive branch discretion and legislative/judicial oversight in making decisions about safe haven. There are many advantages to preserving a large measure of executive discretion in granting safe haven, most importantly to maintain the flexibility to respond quickly to emergent situations. Current practice, however, has tilted too far in this direction. Safe haven decisions, particularly regarding EVD, are made in the executive branch with little or no consultation. Discretion in determining who will receive EVD is absolute.

Within the refugee resettlement program, there is a consultative process that ensures Presidential and Congressional discussion of admission issues prior to the start of each fiscal year. While our previous research has shown some weaknesses in current practice regarding these consultations (they are not timely; provide inadequate input from groups outside of government; and do not make sufficiently clear the criteria used in assessing the need for resettlement), they have served the purpose of increasing communication between the two branches of government.

To ensure that discretion is used appropriately, the locus of responsibility within the federal government for both asylum and safe haven decisions should be reviewed. At present, the State Department generally initiates decisions on safe haven, with the Bureau for Human Rights and Humanitarian Affairs taking the lead. The State Department communicates its decisions to the Justice Department, which takes the official action regarding safe haven. The Immigration and Naturalization Service then notifies its district offices that members of certain nationalities will be granted EVD if they are found deportable. In asylum cases, the BHRHA provides advisory opinions that tend to be followed by both immigration officials and immigration judges.

The Bureau for Refugee Programs and the Office of the U.S. Coordinator for Refugee Affairs are not involved in decisions about asylum or safe haven, unless BHRHA asks their advice. There is thus a bifurcation of responsibility for refugee-related matters, based on whether the aliens are already in the United States or are abroad. Yet, these issues are not as easily separable in their handling as they have been made in their institutional location. As noted above, some migrants have sought or actually received safe haven in other countries before coming to the United States; still others might have sought asylum elsewhere had there been greater opportunities for doing so. Negotiations with other countries and the UNHCR regarding refugee-related matters are within the province of the U.S. Coordinator for Refugee Affairs, under the direction of the Secretary of State. Given the complex interconnections between refugee, asylum and safe haven issues, it would make sense to involve this office in asylum and safe haven-related matters in this country, as it is involved in refugee resettlement matters here and abroad.

There is also need for the involvement of an independent body that could objectively balance the various criteria used in making safe haven decisions. The Canadian government has a Special Review Committee that examines the applications of individual seekers of refuge and it may recommend that a person be allowed to remain in Canada for special humanitarian reasons. The German government vests responsibility for these decisions in an independent body, as well.

CRITERIA FOR GRANTING SAFE HAVEN

Legislated criteria are needed against which to measure the decisions made by the executive branch. The criteria to be used in determining the need for safe haven must take into account a variety of factors, including the three that the Administration now examines: humanitarian concerns, foreign policy, and immigration. It is the weight given to the various factors that is key.

Humanitarian Factors

Critics of current practices regarding EVD for Salvadorans have argued that there is precedence for giving primary consideration to humanitarian factors in granting safe haven. While our review confirms this position, we have found the terms used in justifying previous grants to be vague: "unsettled conditions," "dislocation and uprooting," "widespread violations of human rights," "denial of rights," etc. Since citizens of far more countries met these vague criteria than were granted EVD, it is unclear what differentiated one situation of humanitarian concern from another.

There is need for more discussion about what constitutes humanitarian grounds for a grant of safe haven. We are recommending a legislative approach to this issue, in part to bring into the policy debate a broad range of opinions.

Foreign Policy Factors

Regarding foreign policy factors, there is need for a broader reading of U.S. foreign policy interests in developing decisions regarding safe haven than is currently used. Current and former senior officials in the U.S. government acknowledge that U.S. decisions regarding refugee and refugee-related matters are driven by foreign policy. Our review of safe haven decisions upholds that view.

While foreign policy may be one, among other, legitimate criterion to use in determining whether the United States should permit aliens to remain in this country, our quarrel is with the definition of what is in the "U.S. foreign policy interest." The State Department tends to view foreign policy and humanitarian interests as easily separable factors. This is particularly true when safe haven is requested by nationals of friendly governments. Unwilling to endanger relations with these governments by publicly acknowledging that they are unable to protect their citizenry, the State Department has refused refuge to those fleeing what the U.S. government itself recognizes as distressing conditions. The argument given is the U.S. foreign policy interest. Yet, policies emanating from humanitarian concerns often make for foreign policy in the best long-term interest of the United States. Since the State Department seeks little or no input from individuals or groups that may have differing opinions as to the foreign policy ramifications of safe haven decisions, and congressional review tends to be limited to senses of Congress or special legislation pertaining to a specific nationality, there is little opportunity for presentation of alternative approaches given various foreign policy impacts.

Immigration Factors

Immigration concerns are likely to continue to exert influence on safe haven decisions, and it would be unrealistic to recommend policies that ignored their consequences. Safe haven is controversial because of the frequency with which aliens will seek safe haven given unstable conditions worldwide. Some opponents of a more generous safe haven policy argue that these mechanisms would lead inevitably to immigration abuses. Two major issues were raised: Would recipients of safe haven return to their home countries when and if conditions permitted? And, would a formal grant of safe haven to nationals of a country that is geographically close to the United States serve as a magnet attracting countless others to this nation?

Better information is needed on the immigration impacts of safe haven. Debate on safe haven has been based on suppositions about and fears of the immigration ramifications of safe haven, without adequate or reliable data. For example, there has been little attempt to obtain reliable information upon which to measure the actual immigration effects of safe haven. U.S. government officials have raised the spectre of millions of "feet people" making their way to the United States in seeking support for their foreign policies in Central America and in justifying their opposition to safe haven for Central Americans. Large numbers of undocumented aliens who could potentially benefit from safe haven are used by supporters of such a policy as well, in order to demonstrate how great is the need. In neither case are the estimates based on reliable data, however.

Even if the immigration effects would be as great as is feared were safe haven to be granted indiscriminately, there are still options that fall short of deportation of individuals to threatening situations. The potential immigration impacts of safe haven should be dealt with through controls imposed within the United States on those granted safe haven and greater efforts to encourage the return of exiles when conditions permit.

Reducing the Magnet Effects

Safe haven is essentially a policy of no return, not a form of immigration. It should be seen as a way to live up to humanitarian commitments not to return people to situations in which they may find themselves in danger. Concerns about large-scale, negative impacts of safe haven stem from the perception that the United States has not been able to control effectively the flow of undocumented aliens and will not, therefore, be able to deal with the magnet effects of safe haven. Abetting the concerns is the view that aliens granted safe haven will not return to their countries of origin even if political conditions permit because of the economic differences between the United States and the developing countries from which many political migrants come.

The context in which safe haven issues have been debated has changed recently, by passage of the Immigration Reform and Control Act. The aim of this legislation is to improve the capacity of U.S. authorities to control illegal migration. The imposition of sanctions on employers who hire undocumented workers should serve as a more effective deterrent to aliens who come to the United States for jobs.

Given that overall controls on illegal migration are likely to increase, it is possible to consider mechanisms by which the immigration impacts of safe haven can be lessened.

First, there needs to be greater flexibility to provide safe haven on either individual or group bases. At present, EVD tends to be granted to all members of a designated nationality (an exception being Lebanese applicants for EVD). Such blanket relief from deportation has advantages, particularly in dealing with large-scale emergencies. For example, at the start of a civil war or invasion, there may be large numbers of aliens already in this country (tourists, business people, students, etc.) who find themselves unable to return. EVD gives time to sort out which of these individuals have a well-founded fear of persecution and should be allowed to stay indefinitely and which ones should be given temporary relief from deportation while awaiting stabilization of the situation in their own country or other international solutions.

A status that pertains to all members of a nationality has disadvantages, as well, particularly if it serves as a magnet attracting migrants who might not otherwise have come or who might have sought safe haven closer to home. In many situations of civil strife, there are safe and unsafe zones within the country. Sometimes, those living in the unsafe zones can find safe haven within their own countries; at other times, they would find themselves endangered in trying to reach the safe areas or would find themselves the targets of persecution or violence when they arrived. The offer of safe haven in the United States should not be developed in such a way that movement here is more attractive than internal migration, but nor should it preclude safe haven to those that truly have no other alternatives. For these complicated situations, a case by case determination of the need for safe haven here or the potential for return to the country of origin would be more desirable.

Other devices may also lessen the immigration impacts. For example, required registration of all individuals granted safe haven, used by other nations to keep track of safe haven grantees, should be possible since aliens will find it more difficult to remain clandestinely in U.S. communities.

Under extreme circumstances, when faced with massive numbers of people eligible for safe haven, the United States could consider the establishment of camps or centers for people who should not be returned to their countries of origin. Such a policy would be controversial. Current detention policies have been opposed by many groups that favor more generous responses to seekers of safe haven. In part their opposition stems from a perception that the government detains asylum seekers in order to more effectively handle deportation. If camps were seen as temporary refuges, the opposition may be reduced, particularly if there were plans for allowing residents to leave if they had been detained for a specified period of time.

We would argue against the use of one device that is currently used to reduce the immigration effects of extended voluntary departure: the use of cut-off dates to minimize magnet effects (that is, restricting safe haven to those who entered before a specific date). Since safe haven is primarily a policy of no return, it is inhumane to send people back to dangerous circumstances on the basis of their date of entry, if the latecomers will face the same problems upon return as those who came into the United States at an earlier time.

Increasing Potential for Return

In addition to reducing the magnet effects of safe haven, immigration impacts can also be relieved by increasing the likelihood that people who can return will go home. There has been little review of mechanisms that would more effectively promote repatriation of political migrants when circumstances in their home countries improve.

Return will be difficult for many migrants, particularly those who had been out of their home countries for many years. Yet, many political exiles proclaim their intentions to return to their homelands as soon as the violence abates and/or repressive governments are replaced. Research on return migration of economic migrants shows that there are a variety of factors that encourage repatriation -- such as family considerations -- and that 30 percent or more of these migrants do go back to their home countries.

The situation of political exiles is more complicated, however. So long as violence and strife continue to endanger large numbers of people and civil institutions are unable to protect citizens, it is unreasonable to expect that most exiles will return. Even when change in government permits return, the home countries may be ambivalent about the return of their citizens. On the one hand, the willingness of people to repatriate is a potent symbol of the legitimacy of a new government, particularly one that is striving to show that it has established democratic institutions. On the other hand, returnees may wish to run for elective and political office and might be seen as unwelcome competition. Many developing countries do not have the economic resources to re-integrate their citizenry -- that is, find jobs, housing, etc. Also, citizens who have stayed through the fall of one regime and the emergence of another may be antagonistic toward the expenditure of scarce resources on those who fled.

Until recently, there were relatively few cases in which changes of government occurred in the refugee-producing countries that generated movements of people to the United States, Canada and Europe. Most of those granted safe haven came from Eastern bloc countries that have had long-staying authoritarian countries. This situation has changed recently. Within the past few years, several refugee-producing, developing countries have changed government, including Argentina, Brazil, Uruguay and the Philippines. Further research is needed to examine factors affecting the return migration of the citizenry of these countries in order to develop informed policies regarding safe haven.

In addition, further information is needed about programs to encourage return and facilitate re-integration. Many migrants would choose return if there were adequate assistance to facilitate their re-integration. The Intergovernmental Committee for Migration (ICM) already operates programs for individuals who wish to return from industrialized countries, as does the U.N. High Commissioner for Refugees, but these programs are small in scale and their effectiveness has not been evaluated.

INTERNATIONALIZATION AND REGIONALIZATION

Requests for grants of safe haven should be addressed in the context of efforts to internationalize refugee and related problems. By definition, refugee and refugee-like situations denote movement across national boundaries and therefore involve more than one country. In general, there is need for greater effort to seek international or regional solutions to safe haven situations affecting the United States. The United States is not the only industrialized country facing the direct arrival of political migrants; Europe and Canada are struggling with the issue of safe haven, as well. Similarly, the United States is not the only country in the Western Hemisphere receiving political migrants from Central America. Whether thinking of safe haven as a North Atlantic issue or a regional Americas issue, the same migrants move from one country to another, sometimes in response to changes in the receptivity of their host countries. For example, Canada saw an increase in the number of Salvadorans requesting asylum after passage of the U.S. Immigration Reform and Control Act. Yet, despite the interconnections among countries regarding safe haven, the U.S. government has not tended to think in international terms when seeking solutions to the direct arrival of political migrants.

Along the same lines, decisions regarding safe haven should take greater account of the impact of these decisions on international standards for the protection of refugees and those in refugee-like situations. The unwillingness of the United States to provide safe haven can have negative impacts on international practices and standards. Other countries of asylum, such as Thailand, Pakistan and Mexico, which provide safe haven to thousands of individuals coming from neighboring countries, may see U.S. rejection of asylum seekers from nearby countries such as El Salvador and Haiti as a justification for more restrictive policies.

DEALING WITH DOMESTIC IMPACTS OF SAFE HAVEN

The impacts of safe haven will vary depending on the size and characteristics of the affected population and the length of time they remained in the country. Impacts would also vary depending on the specific rights afforded to those granted safe haven. Three issues stand out: whether those granted safe haven should be given eligibility for social welfare programs; whether they should be given the right to work in the United States; and whether they should be allowed to adjust their status and become permanent residents if the situation in their country of origin does not improve.

Policies regarding both eligibility for services and reimbursements to states and localities for costs incurred because of grants of safe haven should be flexible. U.S. policies regarding eligibility for services and reimbursement of costs have varied in past programs, ranging from special eligibility and full reimbursement for costs incurred by Cuban-Haitian entrants to no eligibility for recipients of EVD. Generally, recipients of these temporary statuses have been granted work authorization. There is good reason to maintain a flexible approach, since the need for services and impacts on states and localities vary greatly. In some cases, the recipients of safe haven will be, by and large, individuals who are already in the United States and are allowed to remain because conditions no longer permit their return. Polish recipients of EVD fall into this category. For these recipients of safe haven, the need for services should not be great since they have already established themselves in this country. In other cases, there may be a mass entry of people who cannot, for one reason or another, be deported. The Mariel Cuban boatlift fell into this category. Here, both the numbers and the method of entry may justify special programs that are similar to those available to refugees. Given the range of possibilities, criteria should be developed to use in determining whether special benefits or reimbursement is needed. s needed.

This approach to social benefits presupposes that those granted safe haven will be given work authorization unless they are living in special camps and/or are given special cash assistance. Once determined to meet the criteria for grants of safe haven, it would be difficult to justify a policy that neither permitted work nor another form of livelihood.

With regard to the adjustment to permanent residence, the issue is also complicated. To some extent all of the major statuses available to humanitarian exiles assume temporary residence. Even asylum is granted pending changes in the country of origin, although asylees are able to adjust to permanent residence after one year. Other statuses, including withholding of deportation and extended voluntary departure, are more explicitly policies of no return, providing no mechanisms to permit adjustment to permanent residence.

While it is important to preserve the temporariness of the safe haven grant and to encourage return when possible, mechanisms are needed to permit recipients of temporary safe haven to adjust their status to permanent residence if conditions do not permit their return. In practice, some recipients of temporary statuses remain in limbo status for extended periods of time because conditions in their home countries do not change. At present, special legislation would be needed to regularize the status of those who have been in the country for very long periods unless we wish to establish a permanent second-class of temporary resident.

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The conclusions and recommendations presented in this report are designed to improve the capacity of the United States to respond effectively and humanely to the direct arrival of political exiles. Recognizing that the issues covered in this report are among the most controversial ones facing the U.S. immigration and refugee system, our primary recommendation is for the development of a coherent public policy on safe haven. Towards this end, we urge that there be ongoing public dialogue about safe haven in the hopes that consensus can be developed regarding the U.S. role as a country of first asylum. It is our hope that this report will provide a useful basis for these public discussions.

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